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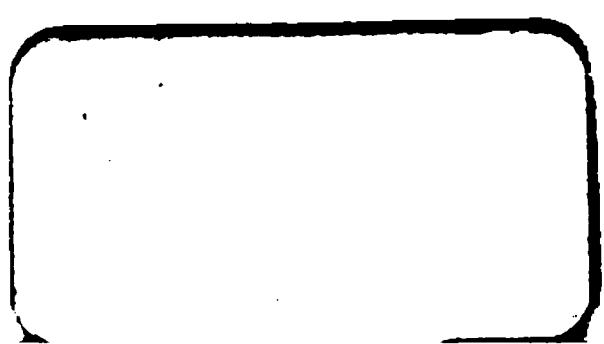
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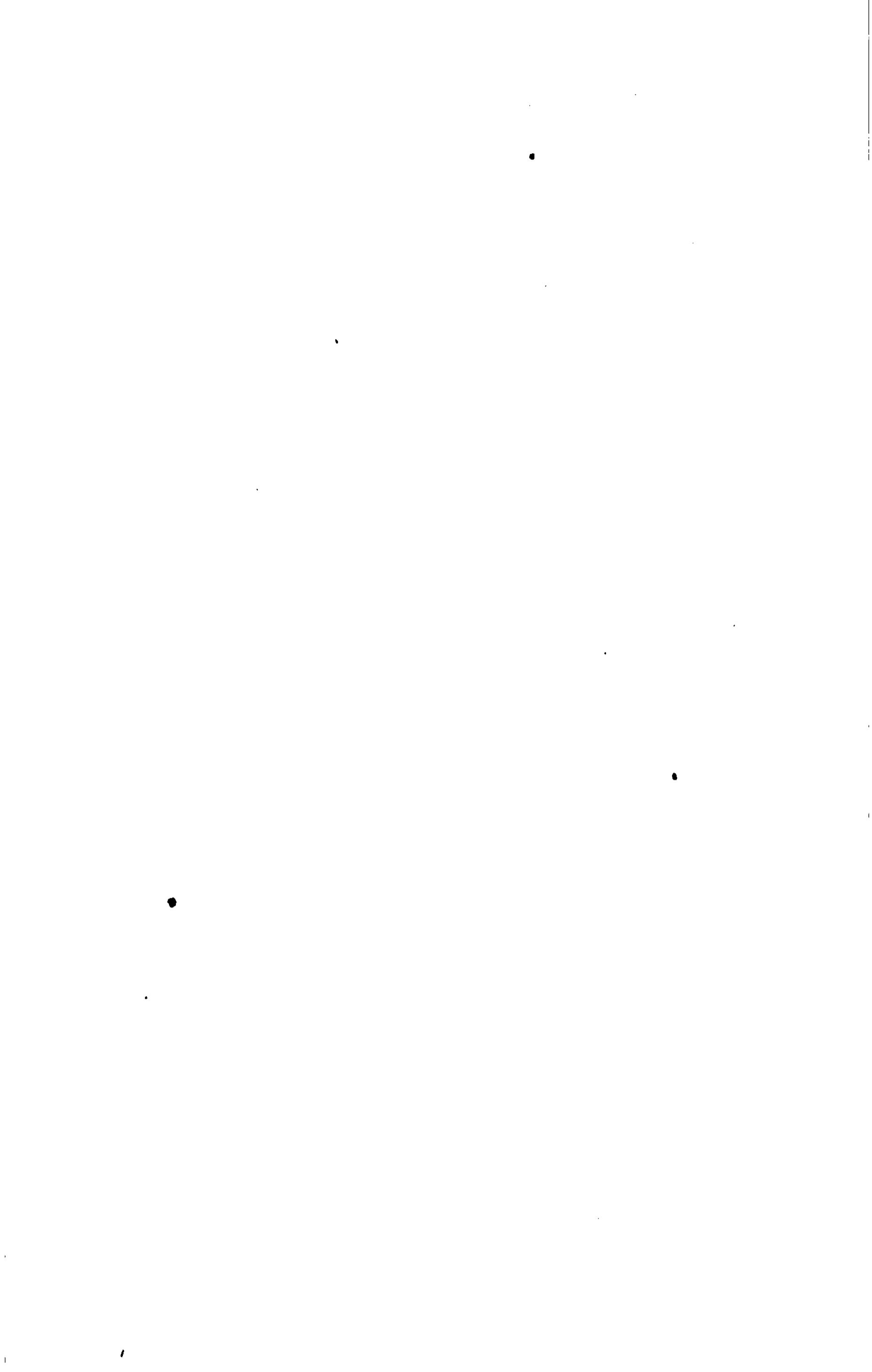
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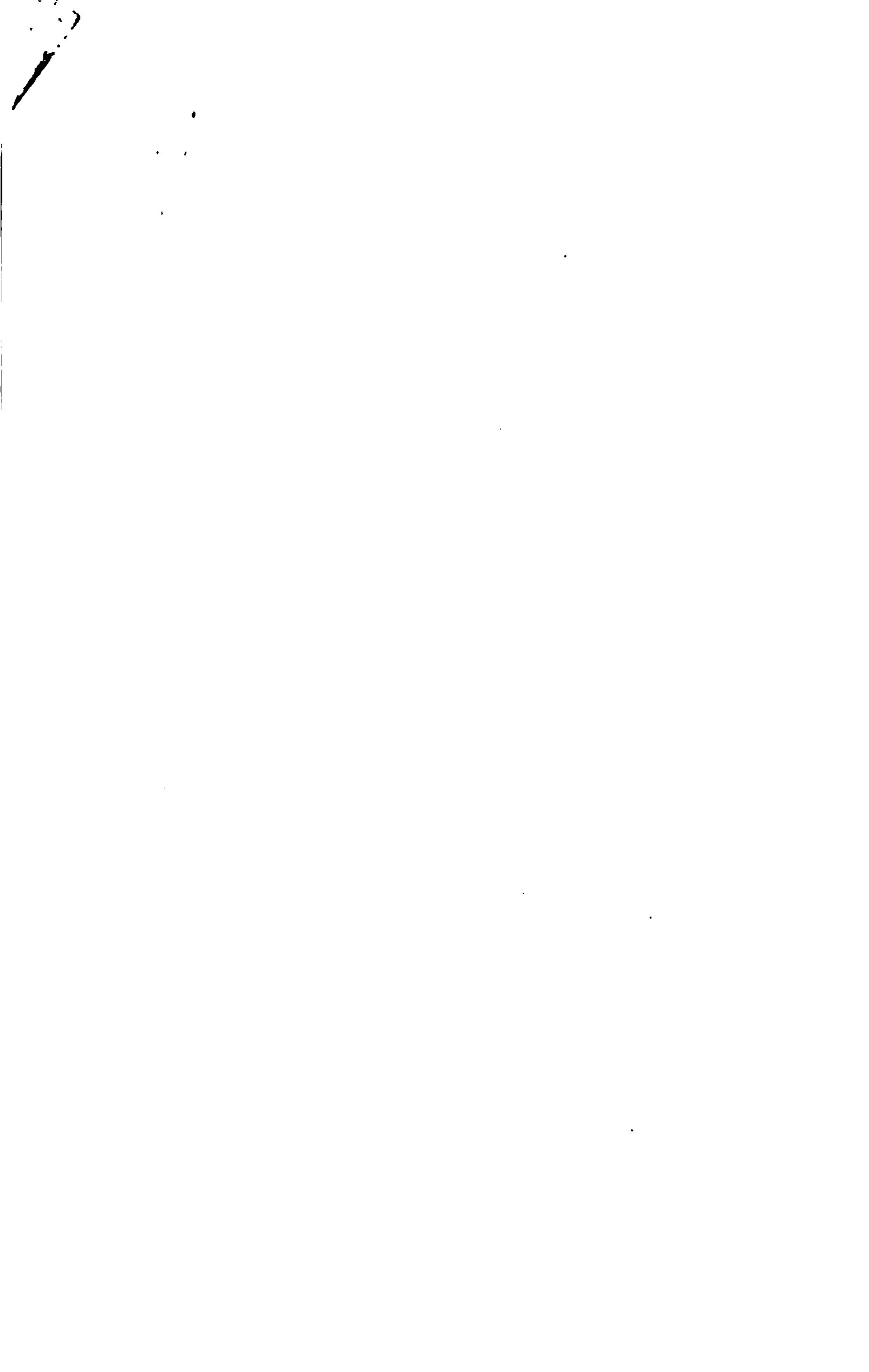


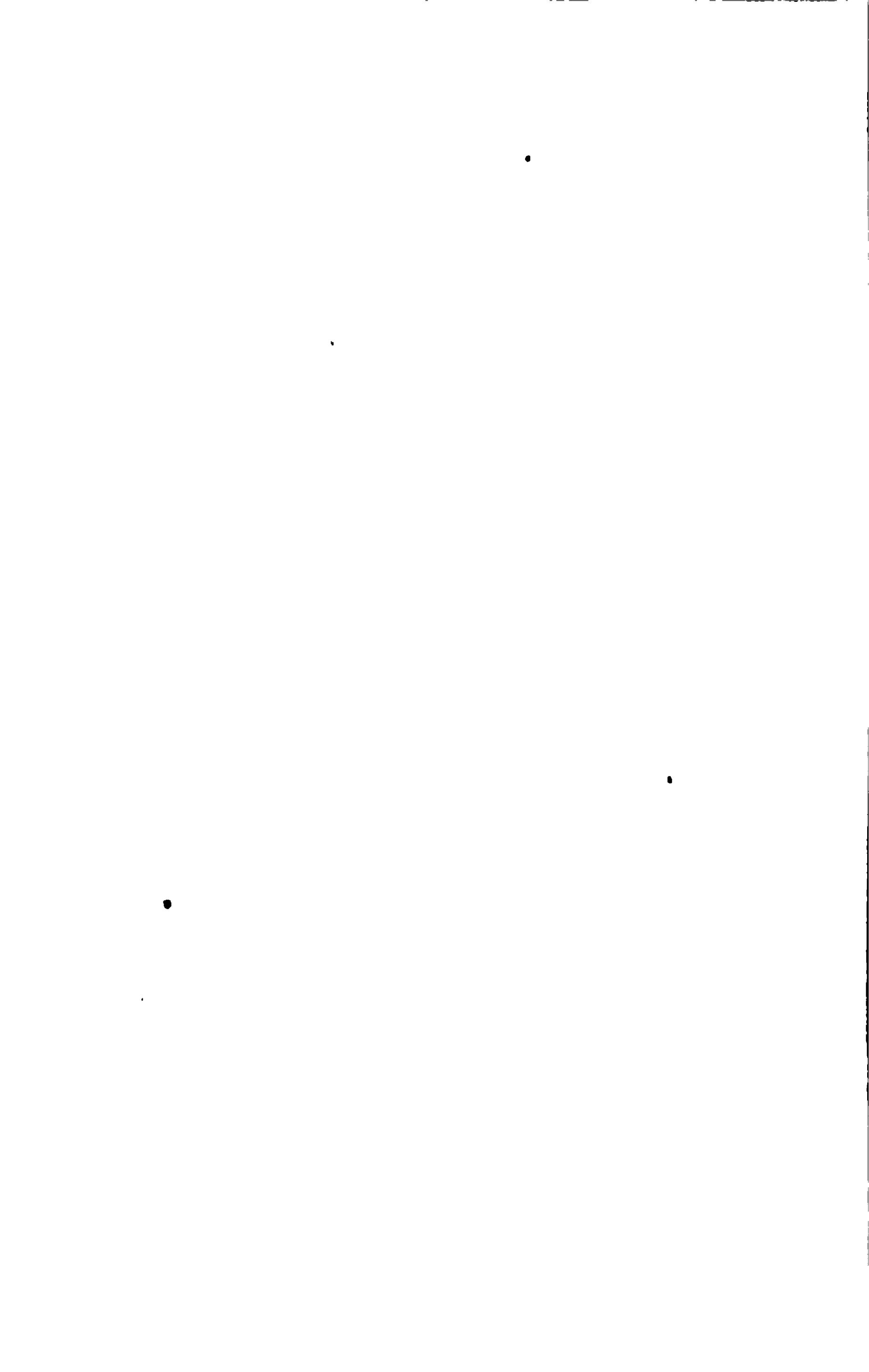


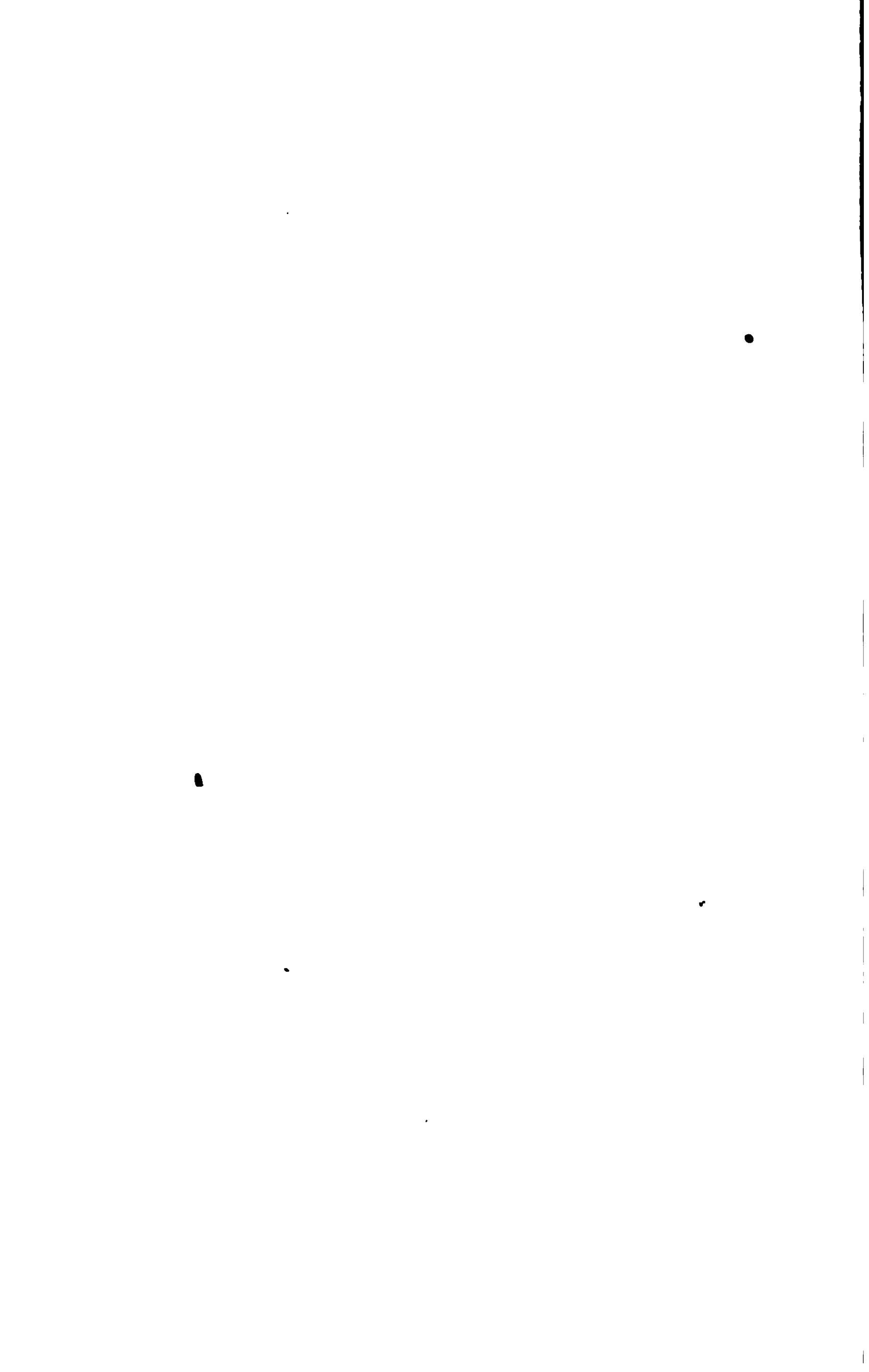
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First Edition (Third of "Talks on Civics") printed May 1907

PREFACE TO THE THIRD EDITION.

While this book is, in one sense, a third edition of my "Talks on Civics", it is really, in many important differences and additions, almost a new work. Among the peculiarities, not to speak of the defects, under which the earlier editions labored, was the catechetical form, of which I expressed my distrust in the first preface. That form was adopted largely because the work was aimed at very young pupils. Before it was finished, I became convinced, as stated in a note to the earlier editions, that the aim was not one suited either to the greatest possible usefulness of the book, or to the capacity of the author. Both in regard to the aim, and to the catechetical form, this conviction was supported by many readers, and in consequence I have rewritten the book. The rewriting of course has led to many differences of detail; and the growth of my own convictions, as well as the astonishing development during the past few years in many of the matters treated, and the increase of topics demanding treatment, have combined to make the work, as already stated, in many particulars a new one. So rapid has been the development in some particulars, as almost to render them unfit for treatment in a book, and to make it impossible to keep pace with them except in the daily and periodical press. Each proof and each revise has clamored for insertions, and I go to press neglecting important matter that has appeared since my copy, and also my revises, went to the printer. I must even beg the reader's charity for some incon-

sistencies that must have escaped me between matter coming after the original draft, and matter contained in it.

Notwithstanding the space saved by doing away with question and answer, this edition is more than a hundred and fifty pages longer than the preceding one. The added matter contains its share of the sort of repetitions that were confessed, and I hope justified, in the preface to the first edition. Most of it relates to "the labor question", socialism and municipal trading, and will be found principally in Chapters XIX-XXII, and XXVIII-XXX.

I confess, not quite without shame, to having, in the earlier editions, handled the first of those subjects very briefly, and with gloves; the excuse, such as it was, being that whatever good the book might do, would be put out of the reach of common-school pupils by "Labor" influences. Having come to realize, however, before the book was finished, that it had grown unavailable for such pupils, in this edition I have entirely abandoned the attempt to adapt it to them. Yet there may be places where enough of the earlier tenderness for the juvenile mind has survived, to demand my humble apologies to the dignity of the undergraduate. But a much stronger reason for the changes regarding the subjects mentioned, was their growing importance. In the six years since the second edition was published, the "labor question" has become, notwithstanding the graft in corporations, the leading question of the time. I am sorry that my limits do not permit even a fuller treatment of it, but less sorry than I should be if I could not refer the reader for fuller information to so admirable a book as the "Labor Problems" of Prof. T. S. Adams and Miss Helen L. Sumner. Despite the strange showings of figures which I have alluded to on page 252, and despite some other matters which I cannot endorse, Professor Adams's chapter on Strikes and Boycotts surpasses anything on the subject which I know. The book has appeared since the last edition of this one, and has done not a

little to furnish me material for hope that this edition may be an improvement.

What I have found to say regarding the right to stop work and the right to strike, tho not entirely novel, and tho somewhat anticipated even by court decisions, has nevertheless played so small a part as yet in discussions of the subject, that I cannot help regarding it as well worth saying. I am also vain enough to hope that the additional matter regarding socialism may do a little to clear up in some minds that inevitably foggy subject, or at least to show why it is inevitably foggy.

The book is of course "second-hand": to write from original investigation in so many fields, would be impossible: for even if life were long enough, while an author would be investigating one department, those previously gone over would grow beyond him. The utmost possible is the exercise of reasonable care and discrimination in choosing authorities. This I have striven for, but I have not made any attempt like those which I have sometimes been uncharitable enough to suspect in others, to make the book appear more learned than it is, by bothering the reader with citations of authorities for all the statements.

Tho disliking excuses, I will allow myself the one afforded in this connection, for not having taken the trouble to hunt up the names of law cases when they were not given where I found the substance of the decisions. A book intended primarily for undergraduates and general readers, does not need details required only by the profession and investigators. One of the critics of an earlier edition was at the pains to inform his readers that its treatment of law topics can be of little use to the profession. It will also be of little use to students of Chinese. Perhaps, however, I may be excused for saying that other critics (I do not know whether of equal authority) have said that the book contained a good introduction to the study of the municipal law. Whether it did or not, this edition contains a better one, largely due to the friends named

below. I have also gleaned a few new points from Professor Burdick's "Essentials of Business Law."

I am indebted for various valuable criticisms of the earlier editions to Professor Daniels, Judge Baldwin, and Messrs. Samuel Huntington and Ralph Curtis Ringwalt of the New York bar.

My obligations to other writers not consulted for the earlier editions, are, I believe, all acknowledged in the body of the work.

I am glad again to name Mr. Neu, and to express my continued obligation for his admirable proof-reading, and for help in the cross-references and index.

I crave the reader's consideration for the reasons set forth in the preface to the first edition, why the work is a considerable departure from previous works in the same field.

H. H.

NEW YORK,
March 29, 1907.

FROM THE PREFACE TO THE FIRST EDITION.

(March 1, 1901.)

THE MOTIVES.

This book was written in the hope of doing a little something to develop in young people the character of mind which is proof against political quackery—especially the quackery which proposes immediate cures by legislation for the abiding ills resulting from human weakness and ignorance. Since the Civil War, America has been cursed by such proposals probably more than any other country ever was. What beneficent institutions we have, have all been evolved through the long and painful struggles which have at the same time evolved character and morality. If Nature's ways are plain in anything, they are plain in showing that it is only for such prices that she yields such rewards. And yet of all our hard-bought institutions, there is scarcely one, from a stable currency down to the very right of accumulating property, that has lately escaped a strong attempt to overthrow it, and to substitute for it some invention of the moment—or rather some invention bearing a name of the moment, but being really a form of some protean error as old as history.

As these errors all propose to get along faster than Evolution, they would of course be impossible to a mind habitually recognizing the law of Evolution. Yet that law has not even been named, so far as I can recall at the moment, in any of the American elementary books

on civic subjects that I have been able to get hold of.* This may not in all cases be due to neglect, but sometimes to the conviction that it is useless to present the subject to the young. My view is more hopeful, and this book is, perhaps more than anything else, an attempt to saturate young people's minds with the realization that social institutions are evolutions, and therefore (I) that they can no more be modified by laws or votes or any other manifestations of human will than plants or animals can; but (II) that they *can* be modified *as much* as plants or animals can, tho only by the same means—careful study of their life-histories and habits, and cautious efforts in accordance with the proved conditions of their well-being; and (III) that they will be vitiated or destroyed by forced or ignorant treatment.

This is why I have spent so much time over such topics as early land-tenure and the relations of status and contract—in short, over the archæology of the subject. I want to give the pupil a consciousness that enduring institutions are growths, and do not spring up responsive to any magician's wand, be it in the hands of Mr. Altgeld, Mr. Bryan, or even so good a man as Henry George—I want to accustom him, when any method is presented for his vote, to ask: Has this thing roots?

A second motive for the book was to place before American youths at least one text-book that should not claim that our constitutions—state and national, present the final word of human wisdom. Perhaps the admission of notorious defects will bring upon the book charges of lack of patriotism, yet it is not written in a pessimistic spirit. The pessimist generally despairs because achievements fall short of ideals: the wise man compares, rather, what he and his have achieved, with what others have achieved. Our government may not be the best, but we are too near the best to despair. But if our government is ideally good already, why bother to teach

* There is abundant illustration of Evolution in Mr. Fiske's "Civil Government in the United States", but I believe the word is not even mentioned, perhaps because of the theological prejudices prevailing so far back in the dark ages as ten years ago.

anything about it?: it can take care of itself; and in fact, until lately, our people have generally been taught to leave it to do so.

A third motive of the book has been to get some teaching on our constantly recurring questions of money, land-tenure, distribution and taxation, into some places where Economics are not usually taught, and also to get into some places where Economics are taught, a fuller treatment of those four topics than is usually given.

A fourth intention has been to spread a just conception of Contract. The absence of such a conception is at the root of most of the labor troubles, not to speak of private breaches of faith. Those who realize the importance of the subject will not be impatient with the rather protracted and abstract discussion that prefaces the treatment of the laws relating to it.

In time the pupil will, as a voter, need to make up his mind on many hard subjects—so hard, some of them, that for his conclusions, or anybody's, to be taken seriously, seems almost ridiculous. But I am not sure that just that fact is not the most important of all that I want him to appreciate—the fact that in broad civic questions, the wisest man can only feel his way—as Lincoln did: and that of all pests for the voter to avoid, the chief is the man with a scheme—be it silverism, greenbackism, grangerism, socialism, communism, anarchism, or (I am tempted to add) protectionism and militarism, but sometimes there are circumstances justifying these two.

This attitude regarding a scheme may seem inconsistent with my close approach to recommending one regarding taxation. But that approach is only incidental to an effort to trace the indications of Evolution. If our men of schemes would honestly restrict themselves to such efforts, they would be less dangerous.

I have hoped to add life, as well as significance, even at the cost of interruptions, by frequent comparisons of early conditions with present ones.

I have not hesitated to repeat—even to repeat often, where the topic seemed worth iterating or presenting

from several sides. The significance of the matters here treated is not as plain as that of the multiplication-table, which needs to be presented but once.

THE MATERIAL.

From the unlimited range of topics embraced in civic relations, how to select the little bookful best adapted to the needs of the average American youth, is a hard problem. Probably the authors of some of the other text-books would be more puzzled to find good reasons for my selections, than I am for theirs. They generally give much more attention than I do to the anatomy of the government—state minutely all the offices, national, state and local, and not only the qualifications legally required for them, but even for voting for them. Now most of these things, so far as they affect a vote, the voter, as he grows up, is pretty sure to learn from the world; and so far as they do not affect his vote, they must be relegated to the vast domain of useless knowledge—unless indeed he aspire to be, as a politician, something more than a mere voter. The few boys, however, who have this spark of aspiration, get it from the altar of genius, even if it be genius for nothing higher than running a primary: and genius teaches itself.

A man who tries to judge broad questions by details is not going to get anywhere: they involve *too many* details: he can compass but a small part of them, and is in danger of getting the wrong ones and missing the right ones. Broad questions can only be judged on broad principles. Then, it might be asked: Why expect the man of ordinary attainments to judge them at all? I never have been able to find out why; but inasmuch as a vote has been given him, that responsibility has been laid upon him, whether he is fit for it or not. Well, with a fatuity equal perhaps to that which gave him the vote, I have tried in this little book to give him some notion of the broad principles on which the vote should be used. If Ethics—the profoundest and vaguest of all

sciences, is taught in *some* shape from the cradle, is it plain that problems of Civics need be entirely neglected in all shapes, during adolescence? Frankly, I do not expect to teach very much about them: but I do hope to give such a notion of how some sound principles look from the outside, that the voter can tell whether they are recognized or not by those who seek his suffrages, and give his vote accordingly.

And yet I am far from believing that all of even this little book can have much meaning, before it is illuminated by experience. I do believe, however, that much here which may be memorized as little more than dogmatic statement, will gain meaning from day to day, until it becomes significant; and I have even some hope that if the desperate experiment fails with the young, the labor may be rewarded by clarifying to some maturer minds a grave problem or two, through the same courses of thought (even if borrowed thought) that have, I assume, clarified them to my own.

It may seem inconsistent with the foregoing talk about broad principles, that the book includes some groups of such specific rules of the Municipal Law as a layman ought to know and might have to learn at his cost in ordinary business experience. Not only, however, do I think that their value makes them a justifiable part of the only teaching of civic relations that many of my hoped-for readers are apt to get, but I have tried to put even such matter in such a way that it will do its share in impressing the main lesson of the book—the evolution of all the elements of social order, especially the inevitably imperfect evolution of some of the most important elements—"the glorious uncertainties of the law".

The original design included a second part, on the Evolution of Government, to be issued in the same volume with the first. The first part, however, as is usually the case, outran expectation; and as it has a certain completeness in itself, and is long enough to take up the time given in the majority of classes to the subject, and especially as it contains most of the

"practical" matter contemplated in the entire scheme, it has been thought best to publish it without waiting for the completion of the second part; and perhaps to let the completion of that part depend upon the reception accorded to the very uncertain experiment as tried in the present volume.

Although in this part the evolution of several institutions has been considered, the evolution of government in general has not. The intention for the second part, has been not only to give an account of that, but also, as a natural concomitant, to give a fuller idea of the structure of government, tho substituting for much of the detail usually given in books for the same grade of pupils, some of the criticism and suggestion usually avoided.

I let the foregoing paragraph stand to emphasize this one. Since that one was written, I have reread the "Civil Government in the United States", by my lamented friend Professor John Fiske, and I realize more fully than I did in my first reading, that it is in many respects what, while writing my first part, I have come to intend my second part to be. If I ever carry out that intention, it will be because of the other respects, and especially because of a desire to reach minds less mature than perhaps Mr. Fiske's book can reach.

Meanwhile, and perhaps afterwards (if there ever should be an afterwards), Mr. Fiske's book may be regarded as the best one known to me for supplementing what I have tried to do here.

AUTHORITIES.

In addition to some of the older authorities which are already matters of course, I am specially indebted to the following, most of which are rapidly becoming matters of course, if not so already. I let the list grow larger than is usual in acknowledgments, in order that it may serve as a brief bibliography for the use of teachers.*—The late David A. Wells's

* I permit this to stand, tho the present edition is intended for a grade of pupils whose teachers will know more of the bibliography of the subject than I do.

"Recent Economic Changes" and "Theory and Practice of Taxation",* Professor Mayo-Smith's "Economics and Statistics", President Hadley's "Economics", Professor Adams's "Finance", Professor Daniels's "Elements of Public Finance", Professor Seligman's books on Taxation, Mr. Shearman's "Rational Taxation", Judge Baldwin's "Modern Political Institutions", Mr. Mallock's "Labor and the Popular Welfare" and "Classes and Masses", Professor Goodnow's "Municipal Problems", Doctor Shaw's books on Municipal Government, the valuable quarterly on "Municipal Affairs" published by the Reform Club, especially Dr. Maltbie's number on "Municipal Functions", and Mr. Godkin's "Problems of Democracy" as well as *THE NATION* from the time he founded it. A word of acknowledgment is also due to the excellent articles on Civic questions in Johnson's Cyclopædia.

Among elementary books for pupils, I have found help in Mr. Raleigh's admirable little "Elementary Politics" (which, unfortunately for us, was written for England), Professor Robinson's "Elementary Law", Professor Bolles's "Commercial Law", the summary of Municipal Law in Mr. Young's "Government Class Book", Mr. Fiske's "Civil Government in the United States" (tho its field is very different from that of this volume), and in several features of Mr. Martin's "Civil Government". His summary of the "Establishment of Liberty in England" (of course not touched in my present volume), seems to me a little gem, tho possibly rather condensed for the young pupil. I have also found Mr. Ford's "American Citizen's Manual" and Mr. Bartlett's "What I ought to know about the Government of my Country" handy for quick reference.

* Two *real* books that ought to be read by every human being old enough and civilized enough to understand them; this, too, in spite of the fact that the latter was largely written during the lamented author's last illness, and therefore lacks the terseness and vigor of his earlier work. It appeared after the chapters on taxation in this present volume were written, but it was still possible to inject from that work much of whatever good they may contain.

If I have done what I have attempted, as well as these authors have done the very different things which they attempted, I ought to be content.

My hearty thanks are due to Mr. Theodore Neu for rare intelligence, interest, and suggestiveness in reading the proofs and preparing the index.

I am also under very great obligations to Professor Goodnow for reading the proofs, and for calling attention to errors. Of course he is not responsible for those which remain. I shall be similarly grateful to any one pointing out any of them.

CONTENTS.

PREFACE TO THE THIRD EDITION.....	page iii
• FROM THE PREFACE TO THE FIRST EDITION.....	vii

PRELIMINARY SURVEY.

CHAPTER I.—SOCIETY'S CONTROL OF THE INDIVIDUAL— GOVERNMENT.

Sec. 1. Introductory. 2. Social Influence and Control: 2 (a). through the Family; 2 (b). through Public Opinion; 2 (c). through Imitation; 2 (d). through Education; 2 (e). through Government. 3. Civic Relations Defined. 4. Government's Functions Illustrated. 5. Government's Functions Classified. 5 (a). Protection of Rights. 5 (b). Promotion of Convenience. 5 (c). Taxation. 6. Some General Results of Bad Government. 7. Responsibility for Bad Government. 8. Good Government Requires Intelligence, Character and Effort. 9. Extent of Government's Influence. 9 (a). Illustrated by Money.

Geographical Divisions of Government.

Sec. 10. Each Citizen Lives under Several Governments. 11. Overlappings of Local Governments. 12. Functions of Local Government. 13. Of County Government. 14. Of State Government. 15. Of National Government. 15 (a). Sovereignty.

Departments of Government.

Sec. 16. Legislative, Judicial, Executive. 17. Sources of Government. 18. The Three Departments Illustrated in Civil and Criminal Suits. 19. Legislative, Judicial and Executive Functions in Local Government. 20. The Functions in Counties. 21. The Three Functions in States. 22. The Same Functions in the Nation.

BOOK I.—THE PROTECTION OF RIGHTS.

CHAPTER II.—OF RIGHTS IN GENERAL.....	21
Sec. 23. Rights Impose Duties. 24. "Greatest Happiness" Principle and its Application in the Three Kinds of Law. 25. Rights and Duties Imply Each Other. 26 Rights Classified.	
CHAPTER III.—RIGHT TO LIFE.....	25
Sec. 27. The State's Claims. 28. Humanity's Claims. 29. Professional Claims. 30. Life and Work. 31. The Right to Work. 31 (a). Subject Only to the State. 31 (b). Picketing and Boycotting. 32. Duties Conditioning the Right to Work. 33. Society's Alleged Duty to Provide Work. 34. The English Poor Law and the French Workshops. 35. Public Charity.	
CHAPTER IV.—LIBERTY.....	32
Sec. 36. Boundaries of Liberty. 37. Barbarian Liberty and Civilized Liberty. 38. Duties Balancing Rights to Liberty. 39. State's Right to Restraine Liberty. 40. "Eternal Vigilance." 41. Constitutional Defences, Bill of Rights. 42. The Man with a Pull. 43. Freedom of Opinion. 44. Laws Threatening Liberty.	
CHAPTER V.—THE PURSUIT OF HAPPINESS.....	39
Sec. 45. A General Term for Many Rights. 46. Restricted, as All Rights are. 47. The Right to Work Involves Rights of Property and Exchange. 47 (a). Limited, like All Other Rights. 48. The Rights to Work, to Property and of Exchange Involve Rights to Contract 49. and to Reputation. 50. State does not Furnish Means to Happiness, but Only Rights to Work for Them. 51. Evolution of Property Rights. 51 (a). Their Sources—Raw Material, Labor, Ability.	
CHAPTER VI.—REAL PROPERTY.....	44
Sec. 52. Land and Sea the Source of Raw Material. 53. Early Conditions. 54. Communistic Ownership. 55. The Feudal System. 55 (a). Why an Advance on Communism. 55 (b). When Established. 55 (c). Evolution of Hereditary Feudal Relations. 55 (d). Guardianship, Disposal by Marriage. 55 (e). Domesday Book. 56. Evolution of Private Ownership. 56 (a). Scutage. 56 (b). Leases for Labor. 56 (c). Money Commutation of Labor Leases. 57. Land-tenure in America. 58. Land-tenure Similar among All Peoples of the Same Grade. 59. Private Property in Land a Great Stimulus to Ability. 60. The Strong Man's Chance Not at the Expense of the Weak. 61. Proportion of Private Owners Increases with Civilization. 62. Landowners the Best Guardians of Government, 63. and the	

Most Thrifty Citizens. 64. Exaggerated Claims from the Fore-going Advantages. 64 (a). The Right to a Home. 64 (b). The Right to a Living. 65. Land Valueless to All but Able Men. 66. Proposed Reversion to Government Ownership. 67. Landowners Support the Government under Either System. 68. Some Advocate Robbery, which would Disappoint Them. 69. The Only Way to Help the Poor is to Help Them Help Themselves. 70. The Moral Arguments—Original General Ownership. 71. Attempt to Remedy Injustice Sometimes only Increases It. 72. Performing Duties of Ownership Breeds Rights of Ownership. 73. Rights in Improvements. 74. The Unearned Increment. 74 (a). Not Characteristic of Land Alone. 75. All Schemes to Abolish Private Ownership are Retrogressive. 76. Private Property in Land of Universal Importance. 77. Rights in Land Limited like All Rights. 78. Rights of Eminent Domain.

CHAPTER VII.—LAW OF REAL PROPERTY..... 65

Sec. 79. The Law in General. 80. Real Estate and Personal Property. 81. Laws Protecting Ownership. 81 (a). Damages for Trespass. 81 (b). Right of Ejectment. 82. Laws Affecting Transfers. 82 (a). Livery of Seisin. 82 (b). Statute of Frauds Requiring Written Evidence of Transfer. 82 (c). Contracts of Sale. 82 (d). Deeds. 82 (e). Seal and its Effect. 82 (f). Essentials of Deeds. 82 (g). Dower and Courtesy. 82 (h). Value of Established Forms. 82 (i). Registry. Title-search. 82 (j). Judgments. 82 (k). Statutes of Limitations. Prescriptions. Appurtenances. 82 (l). Title Insurance. 82 (m). Clouds on Title. 82 (n). Delivery of Deed. 83. Mortgages. 83 (a). Bonds. 84. Leases. 85. Rights of Third Parties Regarding Registry. 86. Effect of Fraud. 87. Land Differs from Negotiable Papers. 88. Technical Meaning of "Estate" in Land. 89. Rights under Estates for Years. 89 (a). Repairs. 89 (b). Subletting. 89 (c). Terminability, Notice. 90. Rights under Life Estate. 91. Under Estates at Will. 92. Appurtenances. 92 (a). Party Walls. 92 (b). Land beside Roads. 92 (c). Land by Water. 93. Restrictions. 94. The Torrens System.

CHAPTER VIII.—PERSONAL PROPERTY..... 87

Evolution of Rights in It.

Sec. 95. Product Varies with Ability. 95 (a). even the Product of the Lowest Laborers. 96. Difficulty of Adjusting Rights between Ability and Labor. 97. General Functions of Ability. 97 (a). The Civilized Man Loses the Savage's Independence. 97 (b). Things Made to Embody Thoughts. 97 (c). Averages and Ability. 97 (d). The Lower Depends on the Higher. 97 (e). "Finds Work." 97 (f). Increases Product. 97 (g). Saves Waste. 98. Detailed Functions of Ability.

98 (a). Prophesying Wants. 98 (b). Raising Capital. 98 (c). At the Works. 98 (d). Outside of the Works. 99. Popular View of the Enterpriser. 100. Division of Labor. 101. Few Men can Conduct Large Enterprises. 102. Ability Outside of Tangible Production. 103. "The Great Industry" Cheapens Product. 104. Enterpriser's Income Not at Expense of Labor. 105. Invention and Evolution. 106. Labor Abounds in Poorest Countries. 107. The Enterpriser must Pay Good Wages. 107 (a). Often in Bad Times. 108. Where Ability's Reward does Come from. 109. Production Not All by Hand. 110. Destruction of Bad Economics. 111. Values Depend on Sound Morals. 112. Paradoxes of Distribution. 113. Paradoxes of Opinion. 114. Why Returns of Labor are Nearly Fixed. 115. Why Those of Ability Vary Widely. 116. Capital's Return More Like Labor's than Ability's. 117. Ability cannot Waste Time and Strength in Grinding Labor or Capital. 118. Capital and Labor Powerless without Ability. 119. The Rates of Division. 120. Enterprisers Generally Get Less than Nothing. 121. Handworkers of Special Ability. 122. Property Not All Tangible. 123. Comparative Profits in Different Fields of Ability. 124. Why so Few have Great Ability. 125. Discovery of the Foregoing Truths. 126. Ability Increasing. 127. Suum Cuique. 128. Minimum Wage and Sliding Scale. 129. No Lack of Opportunity. 130. But Few Able to Embrace It. 131. Is Inequality of Fortune Right? 132. Evils have their Uses.

CHAPTER IX.—PROPERTY AS CAPITAL..... 116

Sec. 133. As Much Entitled to Government's Protection as Wages. 134. A Man who can Use Money can Hire It. 135. What Capital Consists in. 136. Rent. 137. Interest. 138. Usury. 138 (a). Laws against It Useless. 138 (b). Disappearing from Enlightened Communities. 138 (c). Hard on Borrowers. 139. Needs for Associating Capital. 140. Incorporations. 140 (a). As Affecting Liability. 140 (b). Perpetuity. 140 (c). Stocks and Bonds. 141. Large Corporations Not All Owned by the Rich. 142. Irresponsibility of Corporations. 143. Very Small Corporations Undesirable. 144. Why Labor Hates Corporations. 145. Danger of Monopoly.

CHAPTER X.—COMPETITION, MONOPOLY AND INDUSTRIAL AND LABOR TRUSTS..... 127

Sec. 146. Rights of and to Competition. 147. Hated by the Lazy and Stupid. 148. Benefits Illustrated. 148 (a). In Domestic Convenience. 148 (b). In Travel. 148 (c). In Commercial Traveling. 148 (d). In Regulation of Prices through Demand and Supply. 148 (e). Minor Exceptions. 149. Evils in Competition. 149 (a). Suppressing Incapacity not among Them. 149 (b). Nor is Poverty. 149 (c). But Wastefulness is. 150. Public Seldom Gainer by Wasteful Competition. 151.

Coöperation and Competition. 152. Capital Trusts. 152 (a). Their Economy. 152 (b). Not Generally Profitable. 152 (c). Their Monopoly Sometimes Causes its Own Cure, 152 (d). and Sometimes does Not. 153. Property Rights do Not Always Include Monopoly Rights. 154. State Control. 154 (a). By Anti-trust Laws. 154 (b). Capital Trusts and Labor Trusts. 154 (c). By Fixing Prices. 154 (d). By Eminent Domain. 154 (e). Danger of Government Tyranny. 155. Effect of Great Aggregations of Capital on Legislation. 156. Socialism as a Remedy. 157. The Only Real Remedies. 157 (a). An Illustration.

CHAPTER XI.—RIGHTS IN NATURAL MONOPOLIES. 144

Sec. 158. Some Things are Inevitably Monopolies. 158 (a). But the Earth Not One of Them. 159. Why Railroads are Apt to be Monopolies. 159 (a). Why They Need Government Authorization, 159 (b). and should Pay for It. 159 (c). So with Other Facilities. 160. Those in America Being Generally Grabbed by the Politicians. 161. Should Not be Sold Out-right. 162. How Natural Monopolies Become Personal Property.

CHAPTER XII.—THE LAW OF RIGHTS IN PERSONAL PROPERTY..... 148

Sec. 163. Differences between Law of Personal Property and that of Land. 163 (a). Personal Property Seldom Registered. 163 (b). Important Kinds Passed by Endorsement. 163 (c). Can Take One's Own Wherever Found, and in Some Cases by Force. 163 (d). Ownership of Some Kinds can be Lost Without Neglect. 163 (e). Can be Mortgaged without Registry if in Mortgagee's Possession. 164. Pledges. 165. Personal Property the Great Field of Contract.

CHAPTER XIII.—CONTRACT..... 152

As an Element in Civilization.

Sec. 166. Difference between Contract Rights and Property Rights. 167. Contract, Agreement, Bargain. 168. Contract Possible Only to the Free. 169. Contract an Education in Freedom. 170. Under Contract, only Able Employers can Secure Labor. 171. Status versus Contract. 172. Contract, Freedom and Private Property All Evolve Together. 173. As They Evolve, Militarism Declines. 174. Because it is a Form of Status. 175. Fighting versus Producing. 175 (a). Illustrated in Nations of To-day. 176. Why Private Property is Essential to Advance beyond Status. 177. Civilization and Trade Go Together. 178. Breaking Contracts and Advocating Socialism.

CHAPTER XIV.—GENERAL LAW OF CONTRACT..... 159

Sec. 179. Essentials of a Contract. 179 (a). Illustrations. 180. Natural Love and Affection. 181. Promises and Contracts. 182. Legal Fiction. 183. Mutuality in Contracts. 184. Law and Religion. 185. Justice and Honor. 186. Contracts the Law will not Enforce. 186 (a). For Wrong-doing. 186 (b). Wagers. 186 (c). "The Act of God or the Public Enemy." 187. Law Imposes Self-preservation. 188. But cannot Furnish Wisdom. 189. Contracts which the Law Assumes. 190. Estoppel. 191. Carelessness and Fraud. 192. Fraud Never Defined. 193. Statutes of Limitations Again. 194. Force Vitiates Contract. 195. Courts Needed against Ignorance as much as against Fraud. 195 (a). Illustrated in Confusion, Construction and Friendly Suits. 196. Contracts when Parties do not Meet. 197. The Law is an Evolution.

CHAPTER XV.—LAW OF CONTRACTS CONCERNING PERSONAL PROPERTY..... 173

Sec. 198. Sale and Delivery, 198 (a). as Generally Affected by the Statute of Frauds, 198 (b). by Part Payment. 198 (c). Prior Lien. 199. No One can Sell More Title than He Has. 200. Possession and Ownership. 201. Owner must not Secure Possession by Force. 202. Delivery and Acceptance Complete Ownership. 202 (a). Delivery to Agent or Carrier Good. 203. Conditional Sale. 204. Option. 205. When Defects must be Disclosed. 206. Warranty. 207. Suretyship. 208. Insurance. 209. Bailments 209 (a). on Different Kinds of Goods. 209 (b). "Common Carrier" Defined. 209 (c). Limiting Liability without Contract. 209 (d). Bill-of-Lading. 209 (e). Hiring. 209 (f). The Law does not Require Impossibilities. 209 (g). Bailment without Consideration. 209 (h). Liability of Innkeepers. 209 (i). Pledge. 209 (j). General Principle of Liability of Bailees. 210. Tender. 210 (a). Kinds of Money in. 210 (b). Determined by Congress. 211. Contractual Disabilities. 212. Some Limits of Quantum Valebat. 212 (a). Enrichment. 213. The Law Protects the Weak.

CHAPTER XVI.—LAW OF CONTRACTS FOR PERSONAL RELATIONS..... 190

Sec. 214. Agency. 214 (a). Authorized Acts Bind Principal. 214 (b). Agent Liable for Exceeding his Authority. 214 (c). Principal Bound Also by Acts Third Party has Good Reason to Believe Authorized. 214 (d). Agency through Necessity. 214 (e). Agent cannot Make any Profit for Himself. 214 (f). The Superior is Generally Liable, 214 (g). even for Wrong Done in Course of Routine Duties, 214 (h). which Justice to the Sufferer Generally Requires. 214 (i). Both Principal and Agent Liable in Wrong-doing. 214 (j). Classes of Agents. 215. Partnership. 216. Service. 216 (a). Discharge for Cause

Stops Pay for Rest of Term. 216 (b). Discharge without Cause, or Leaving for Cause, does not. 216 (c). Both Bound for the Entire Term. 217. Remedies for Broken Contracts.

CHAPTER XVII.—LAW OF SOME QUASI-CONTRACTUAL RELATIONS. 199

Sec. 218. Trusteeship in General. 219. Safeguards. 220. Assignees of Bankrupts. 220 (a). Justice of Discharging Bankrupts. 221. Administrators. Devolution of Intestate Estates. 221 (a). Rights of Relatives of Intestates. 222. Executors. Wills. 222 (a). Who cannot Make Wills. 222 (b). Restrictions on Alienation. 222 (c). DeVises for Educational or Charitable Uses. 223. Guardianship. 224. Need of Probate Courts. 225. Trustees for Defectives. 226. Court Supervision of Trustees in General.

CHAPTER XVIII.—PERSONAL PROPERTY..... 208

Schemes for Distributing It More Evenly.

(I) Scamping, Forbidding Work, Destroying Product, Anarchism, Communism.

Sec. 227. Poverty has No Causes. 228. Scamping Work. 228 (a). Keeps the Scamper Out of Jobs. 228 (b). He Gets Only One Profit but Pays Many. 228 (c). Cannot Long Receive Good Wages unless Earned. Piecework. 229. Pretending and Forbidding Labor. 230. "Shutting Down" a Different Case. 231. Destruction as an Aid to Production. 232. Only One Class of Many Schemes to Get Something Out of Nothing. 233. People Generally Consider Only Income, Not Outgo. 234. Anarchism. 234 (a). Badness of Present Laws does not Prove Goodness of Proposed Changes. 235. Communism. 235 (a). \$1,200 Apiece. 235 (b). Sudden Wealth a Doubtful Blessing. 235 (c). Would Last but a Little While, 235 (d). and then there would be Less than Now. 235 (e). Meaningless without Robbery. 235 (f). Many Kinds of Wealth cannot be Divided without Being Destroyed.

CHAPTER XIX.—PERSONAL PROPERTY (Continued). 225

Schemes for Distributing It More Evenly (Continued).

(II) Socialism.

Sec. 236. Socialism. 236 (a). Wages could not Rise. 236 (b). Impracticability of Political Management. 236 (c). Losses to Education, Charity and Liberty. 236 (d). Forcing Ability. 236 (e). The Argument from Experience. 236 (f). Can be Undertaken when Government is its Own Customer. 236 (g). Private Initiative Essential to Variety. 236 (h). General Government Production Attacks Property, Contract and Charity. 236 (i). Futility of Attempting It by Eminent Domain. 236 (j).

Effect on Laborers. 236 (k). A Premium on Laziness. 236 (l). Would Destroy Freedom. 236 (m). The Unemployed. 237. Names Socialism and Individualism. 237 (a). Socialism a Vague Name. 237 (b). At Least Three Meanings. 238. Socialism against Competition. 239. All Experience for Individualism. 240. Socialism and Magic an Illustration. 241. Present Agencies toward Same Ends. 242. No Magic in Laws and Names. 243. Another Specimen. 244. Need and Desert. 245. High-pressure Progress. 246. Socialism, when Possible, will be Needless. 247. The Web of Civilization.

CHAPTER XX.—PERSONAL PROPERTY (Continued) 243

Schemes for Distributing It More Evenly (Continued).

(III) *Trade-union Coercion.*

Sec. 248. Corner of Supply of Labor. 248 (a). Justifiable Only in Self-defence. 249. Demand and Supply in Labor. 250. Wages Necessarily Limited 250 (a). by Demand for Product, 250 (b). by Competition, 250 (c). by Invention. 251. False Justifications for Coercion. 252. Aimed against Laborer, Employer and Public. 253. Coercing the Employer. 254. The Strike. 255. Conspiring to Stop Work. 256. Other Coercions. 257. Misleading Statistics of Strikes. 258. Coercing the Laborer. 258 (a). The Labor Trust. 259. Coercing the Public. The Union Label. 260. A Second Illustration. 261. The Right to Stop Work. 262. The Community's Defence. 263. Society Organizing in Self-defence. 264. Educational Results. 264 (a). The Community's Defence will Defend the Workman.

CHAPTER XXI.—PERSONAL PROPERTY (Continued) 265

Schemes for Distributing It More Evenly (Continued).

(IV) *Labor and the Law.*

Sec. 265. Natural Law and Civic Law. 265 (a). The Law of Conspiracy. 265 (b). The "Corner" Again. 265 (c). Malicious Intent. 265 (d). Labor-saving Machinery. 265 (e). The Open Shop. 265 (f). "Immediate Interest" and the Sympathetic Strike. 265 (g). Prof. Adams' Summary. 265 (h). Conflicting Laws. 265 (i). Duty of District Attorneys. 266. The Workman's Freedom. 267. The Law Chaotic. 268. Picketing Unlawful. 269. Unions' Liability for Damages. 269 (a). Misdemeanor as a Substitute. 270. Some Summaries of the Law. 271. Injunctions. 272. Regulation of Wages, Hours and Conditions. 272 (a). The Labor Trust Again. 272 (b). Protecting the Laborer against Himself. 272 (c). Wages Unlike Conditions. 272 (d). The Living Wage. 272 (e). Too Much Care Enervating and against Liberty. 272 (f). Extremes and the Medium.

CHAPTER XXII.—PERSONAL PROPERTY (Continued) 289

Schemes for Distributing It More Evenly (Continued).(V) *Remedies on Trial.*

Sec. 273. Industrial War and Industrial Law. 274. Legal Experiments in Australasia. 274 (a). Their Results to be Discounted for American Conditions. 275. State Competition with Monopolies. 275 (a). In Lending Capital. 275 (b). In Some Industries. 276. The Minimum Wage. 276 (a). Against Sweating. 276 (b). Sought by Good Employers. 276 (c). How Regulated. 276 (d). Not Always Effective. 276 (e). Recrudescence of the Sweat-shop. 276 (f). Exceptions Allowed. 276 (g). High Prices Resulting. 276 (h). Bolstering up Needed. 276 (i). Points to State Employment and Socialism. 277. Statute Law and Natural Law. 278. The Arbitration Courts. 278 (a). Started to Prevent Strikes. 279. Ineffectiveness of Voluntary Arbitration. 280. The First Compulsory Arbitration Act. 280 (a). Recognized Only Unions. 280 (b). Could Dismiss Trivial Claims. 280 (c). Damages. 280 (d). Faithful Acceptance of Decrees. 280 (e). Competence of Courts in Business Affairs. 280 (f). Effect on Strikes. 280 (g). Spread of the Courts and Unexpected Activity. 280 (h). Both Sides Arranged Cases to Refer. 280 (i). Courts Tried to Follow the Market. 280 (j). Court's Power of Initiative. 280 (k). Question of Overcrowding. 281. Aspects in 1890. 282. A Theory of Wages and Prices. 283. Mr. Lloyd's Conclusions in 1900. 284. Mr. Reeves in 1903. 285. Claims Continued Success. 286. Judge Backhouse's Testimony. 287. The Courts to Keep the Peace. 288. Details by Mr. Reeves. 289. Dr. Clark in 1906 not Quite so Optimistic. 290. Courts Now Have Legislative Power. 291. Laws against Strikes. 292. Current Law Prohibits Sympathetic Strikes. 293. And Makes Awards Binding in Adjoining Districts. 294. Awards Evaded. 295. Hard to Fit Conditions. 296. Danger of Over-regulation. 297. Promotes Centralization of Industry. 298. And Uniformity of Wages. 299. But so Minimizes Oppression. 300. Only One Side can Pay Damages. 301. But Moral Sanction Often Effective. 302. Continued High Prices and Palliatives. 303. Courts Consider Cost of Living, and Profits and All Conditions. 304. Startling Declaration of Court's Powers. 305. Supports the Closed Shop—Conditionally. 306. Political and Class Legislation by Courts. 307. Curtails Freedom of the Press. 308. And "the Obligation of Contracts". 309. And the Right of Assembly. 310. And Trial by Jury. 311. Attacks on Liberty not Premeditated. 312. New Conditions, Unexpected Results. 313. Yet All Admitted to be Progress toward Socialism. 314. Has Experiment Proved Socialism at War with Liberty and Progress? 315. No Business Disasters yet. 316. Experimenting in Prosperous Times. 317. Dis-

agreement as to Prospects. 318. Increased Fealty to Law. 319. The Equilibrium Unstable. 320. The Latest Word. 321. Repair as Likely as Failure. 322. Gains in Prosperity may Carry through Adversity. 322 (a). America must Change.

CHAPTER XXIII.—PERSONAL PROPERTY (Continued)..... 325

Proved Methods for Diffusing It More Evenly.

Sec. 323. Progress in General. 324. Diffusion of Wealth Depends on Diffusion of Ability. 325. Averages Tend to Rise. 326. Diffusion Increasing. 327. "Rich Richer, and Poor Poorer" is not True in Civilized Countries. 327 (a). Pendulum Swings Backward in 1903. 327 (b). Recent Reduction in Hours. 328. Increase in Wages and Decrease in Other Prices Come Largely from Capital's Share, 329. and from Labor's Increased Ability, 330. and from Diffusion of Honesty, 330 (a). which Makes Everybody's Money go Farther, 330 (b). especially Honesty in Government, 331. and from Creating and Supplying New Wants, 331 (a). mainly through Labor-saving Machinery, 331 (b). which, tho of Some Harm at the Outset, 331 (c). is but Seldom of Any Now. 332. A Man Secures Wealth Himself 332 (a). by Forehandness against Hard Times, 332 (b). in which Prices of Necessities Tend to Keep Up, while those of Luxuries Fall. 332 (c). By Cultivating Ability. 333. Poverty Seldom Blameless. 334. Most Rich Men Born Poor. 335. Happiness not Dependent on Wealth. 336. Wise Philanthropy Necessary to Civilization. 336 (a). It should Continue on Present Lines. 336 (b). It should Help Only Those that cannot Work. 337. Province of the Law. 337 (a). Cannot Discriminate between People. 338. Benevolence does not Prevent Accumulating Wealth. 339. Speculation. 340. Law cannot Regulate Wealth Wisely. 340 (a) Must not Paralyze Ability. 341. Duties of Wealth. 341 (a). In Politics. 341 (b). In Charity and Education or Even in Sport. 342. America's Rich Men Peculiarly Oblivious of Public Duty. 343. Useless Rich Man a "Dependent".

BOOK II.—THE PROMOTION OF CONVENIENCE.

CHAPTER XXIV.—PRELIMINARY SURVEY..... 357

CHAPTER XXV.—MONEY..... 359

General Considerations.

Sec. 344. Reasons for Studying Money. 345. Barter and Money. 346. Swindling by Money. 347. Kinds of Money. 348. Qualities of All Money. 349. Bad Money as Legal Tender. 350. Definition Reached. 351. Bad Money Buys Less than Good. 352. Value in Paper Money. 353. Fiat Money, Token Money. 354. Redemption Money.

CHAPTER XXVI.—MONEY (Continued)..... 366*Some American Experience.*

Sec. 355. How Paper Money Cheated Creditors, 355 (a). and Raised Prices. 356. "Never Mind Europe". 357. Effect of Money Not Payable in Gold. 358. Why the Silver Dollar has Depreciated. 359. Why Coins were not Made Heavier. 360. American Remonetization in '78 and '90. 361. The Rapacious Fooling the Ignorant. 362. Who Profits by Light-weight Silver? 363. The Poor are not the Debtor Class, 364. nor the Class that Handles Least Gold. 365. The Panic of '93. 365 (a). Begins with Alarm in Europe. 365 (b). Business Suffers. 365 (c). Kansas Tries a New Way of "Bleeding". 365 (d). Hoarding Begins. 365 (e). The Banks and the Poor. 365 (f). Cleveland Stops the Panic, 365 (g). but at Heavy Cost. 366. Government Banking. 367. "16 to 1". 368. Improved Trade Balance Supplies Gold. 369. But that cannot be depended upon. 370. Light-weight Silver Money no New Scheme

CHAPTER XXVII.—MONEY (Continued)..... 380*Needs for the Future.*

Sec. 371. The Best Safeguard. 372. The Safest Money. 373. Paper Better than Light-weight Silver. 374. Safety in Large Bills. 375. Only Safe Silver Certificates. 376. Objections to All Government Notes. 377. Yet Coin Insufficient, 377 (a). and Inelastic, 377 (b). and Eats up Interest. 378. Good Paper Currency Preferable. 379. But not from Government. 380. Essentials of Banknotes. "Wildcat" Money. 381. Essentials of a Sound System. 382. Basis for an Elastic Currency. 383. The Farmer's Needs. 383 (a). Partly his Own Lookout. 383 (b). Remedy for Legitimate Needs.

CHAPTER XXVIII.—PUBLIC WORKS..... 391*Extra-Municipal.*

Sec. 384. Roads. 384 (a). As Spreading Civilization. 384 (b). Evolution in Our Race. 384 (c). Bad American Organization. 385. Bridges. 386. Regulation. Ownership. Operation. 387. Ferries and Docks. 387 (a). Municipal and Private Contracts. 388. Railroads. 388 (a). Superior Service in America and England. 388 (b). Italy. 388 (c). Germany. 388 (d). Government Operation in America. 388 (e). American Construction Less Thorough, 388 (f). and Incidentally Less Careful of Safety. 388 (g). Freight Discriminations. 388 (h). Consolidation and Competition. 388 (i). Constitutional Questions. 388 (j). Taxation of Franchises. 388 (k). Corporation Graft and Political Graft. 388 (l). American Attempts at Government Regulation. 388 (m). Unsuccessfulness of Government Regulation not Complete Argument for Government

Operation. 388 (*n*). "Labor" under Government Operation. 388 (*o*). Improvements Possible under Private Control. 388 (*p*). Government Control of Private Operations. 388 (*q*). Government Aids and Politics. 388 (*r*). The Conclusion. 389. Post-office and Express. 389 (*a*). City versus Country. 389 (*b*). Favoritism to Papers and Periodicals. 389 (*c*). Compared with Other Countries. 389 (*d*). Damage to Literature. 389 (*e*). Government versus Private Enterprise. 389 (*f*). Best where People Watch It Most. 390. Telegraph.

CHAPTER XXIX.—PUBLIC WORKS (Continued)..... 420

Municipal.

Sec. 391. Street Railways. 391 (*a*). Evolution. 391 (*b*). Municipal Operation Increasing in England, Little on Continent, in America None. 391 (*c*). Need of Constant Government Inspection. 391 (*d*). Municipal Sharing of Profits Advancing in America. 391 (*e*). Ownership in America. 391 (*f*). Argument for Municipal Operation. 391 (*g*). American and European Conditions. 391 (*h*). Glasgow. 391 (*i*). Great Britain versus America. 391 (*j*). Nashville. 391 (*k*). Rochester. 391 (*l*). The "Increment" in Franchises. 391 (*m*). Should be Leased but not Sold, and be under One Management. 391 (*n*). Rates of Fare. 391 (*o*). Deteriorating Private Service may Compel Municipal Experiment. 391 (*p*). Some Other Experiments Desirable First. 392. Waterworks. 392 (*a*). Why Fit for Municipalization. 392 (*b*). Health Questions. 392 (*c*). Municipal Management Naturally Wasteful. 393. Lighting. 393 (*a*). Craves Municipalization Less than Water. 393 (*b*). Cheapened by It in Some Places in Europe. 393 (*c*). American Reports Unreliable but Increasingly Discouraging. 393 (*d*). Peculiar Case in Richmond. 393 (*e*). Other American Cities. 393 (*f*). General Considerations. 393 (*g*). Electricity. 393 (*h*). Electricity versus Gas. 393 (*i*). Major Darwin on Utilities Already Treated. 394. Telephone. 395. Tearing up Streets. Tunnels for Pipes, Wires, etc. 396. Advertising Signs. 397. Summary.

CHAPTER XXX.—LATEST ASPECTS OF GOVERNMENT OPERATION..... 447

Sec. 398. Platonists and Aristotelians. 399. Major Darwin to 1903. 400. Municipal Operation Retarding Development. 400 (*a*). Dogs in the Manger. 400 (*b*). English Municipalization Obstructive. 400 (*c*). Strangling Private Enterprise. 400 (*d*). Franchises too Short. 400 (*e*). Ownership Loaded with Operation. 400 (*f*). Results in Number of Lighting Plants and Telephones. 400 (*g*). "Politics". 400 (*h*). English Municipalization Dangerous to the Purity of Government. 400 (*i*). Leaves Out the Able Man. 400 (*j*). Reversal of English Sentiment. 401. Russia and Socialism. 402. Australasian Ex-

perience. 403. Conditions Unprecedentedly Favorable. 404. Government Railroads Run at a Loss. 405. Taxes Highest among Civilized Peoples. 406. Vice of Statistics. 407. Telephones and Coal-mines at a Loss. 408. Government Success in Money-lending. 409. Life-insurance. 410. Conclusions Negative. 411. Laborers Demoralized. 412. Some Fallacies. 413. The Latest American Experience. 413 (a). Omaha. 413 (b). A Weak Showing. 413 (c). The Strong Man will Control under any System. 413 (d). Monopoly and Privilege. 413 (e). Our Private Initiative Better than Europe's. 413 (f). Democracy on Trial. 413 (g). Some Interesting Experiences. 413 (h). Fallacious Reasoning. 413 (i). Desirability of Publicity and Commissions. 413 (j). Monopolies the Ideal Field of the State when Practicable. 414. Summary and Conclusions. 414 (a). English Taxation Increased without Proportionate Results. 414 (b). English Municipalization Obstructive, Especially to Inventive Talent. 414 (c). "The Government Stroke". 414 (d). Municipalization Desirable Only as Defence against Monopoly. 414 (e). Municipalization as Training in Citizenship.

CHAPTER XXXI.—PECULIAR AMERICAN MUNICIPAL DIFFICULTIES..... 473

Sec. 415. American Municipal Corruption. 416. New York in 1870, 416 (a). in 1894, 416 (b). in 1898. 417. City Works are the Plums of Rural as well as Urban Politicians. 418. The City Contrasted with the Nation. 419. Contractors in Office. 420. National Parties in Local Affairs. 420 (a). Partly Caused by Method of Electing U. S. Senators. 420 (b). Corrupts Both National and Local Politics. 420 (c). Paradoxes of Democracy. 421. Civil Service Reform as a Remedy. 422. State Functions to the State, Local Functions to the Locality. 422 (a). Education. 422 (b). Police. 423. America Alone in Confusing Local and National Politics. 424. Vast American Wealth and Good Nature Promote Carelessness. 425. Corruption of Voters under the Guise of Charity. 426. Non-taxpayers Voting. 426 (a). Tilden Commission's Proposed Remedy. 426 (b). Local Suffrage Rights Differ from Others. 426 (c). Limited Local Suffrage in All Well-governed Cities. 426 (d). Where the Non-voter is Best Taken Care of. 426 (e). America can Only Improve the Voter and Limit what He Controls. 427. Universal Suffrage Logically Implies Individualism.

CHAPTER XXXII.—RECREATIONS AND OTHER HELP TO THE LESS FORTUNATE CAPABLE..... 490

Sec. 428. Museums and Libraries. 429. Parks. 430. Clearing Slums. 430 (a). Possible Only under Eminent Domain. 430 (b). Graft. 430 (c). The Negative Side. 430 (d). Success under Private Enterprise. 431. Housing the Poor. 431 (a). Community should Regulate It in Self-defence. 432. Personal

Conveniences, Army Outfitting, etc. 433. Economy and Civilization Both Require Charity, 433 (a). preferably from Individuals. 434. Hospitals and Asylums. 435. Relief to Individual Poor. 436. Pawnshops. 437. Savings-banks. 438. Lodging-houses. 438 (a). Throw Light on Street-begging. 439. Labor Bureaus. 440. Insurance. 441. General Conclusions Regarding Charity. 441 (a). Mutual Help Better than Government Help. 441 (b). The Church, the State, the Philanthropist. 441 (c). The Taxpayer. 441 (d). Many Improvements not at Taxpayers' Expense.

CHAPTER XXXIII.—THE DEFECTIVE CLASSES..... 507

Sec. 442. The Persistently Poor. 442 (a). Neglect Increases the Number. 443. The Insane. 444. The Criminal. 444 (a). Generally Defective. 444 (b). One Wrong Step does not Demonstrate a Criminal. 444 (c). The Indeterminate Sentence. 444 (d). Cheaper to Keep Rounders Permanently. 444 (e). Prison Labor. 445. Euthanasia. 446. A Society Able to Use Ideal Remedies will not Need Them. 447. Advisability of Death as a Penalty.

CHAPTER XXXIV.—THE YOUNG; EDUCATION..... 517

Sec. 448. Nurture. 449. Education. 449 (a). The Illiterate Voter. 449 (b). Unusable Education. 449 (c). Usable Education. 449 (d). Practical Education no Foe to Poetry. 449 (e). Pauperization. 449 (f). State's Responsibility Established. 449 (g). Parents should Pay when Able. 450. The Higher Education.. 450 (a). Not Well Conducted by Political Pulls. 450 (b). The State, the Church, the Philanthropist.

CHAPTER XXXV.—GENERAL CONCLUSIONS ON THE SPHERE OF GOVERNMENT..... 523

Sec. 451. Individualism and Collectivism. 452. Municipalization Increases with Independence, Decreases with Police Control. 452 (a). Increases with Good Local Government. 453. Necessary Limits. 453 (a). Effective Industry Requires Competition. 453 (b). Mainly Determined by Natural Monopoly. 453 (c). Tax for Commodities Universally Used, Charge for Others as Used. 454. The Fundamental Question. 455. Government Service Outside of Monopolies Demoralizing to People and Officers.

BOOK III.—TAXATION.

CHAPTER XXXVI.—GENERAL CONSIDERATIONS ON TAXATION..... 529

Sec. 456. Taxes not the Only Source of Revenue. 457. Interest and Importance of the Subject. 458. Everybody Pays Taxes. 459. Rates in Different Countries. 460. Methods Influence Rate, 460 (a). and Morality, Prosperity, Peace, Stable Government, and Even Health and Life, 460 (b). and Move-

ments of Capital and Ability. 461. Taxation and Civilization. 462. Opposite Methods Illustrated. 463. Direct and Indirect Taxes. 464. Shifting of Taxes. 464 (a). Need of Free Competition. 464 (b). Prices Highest where Taxes are Highest.

CHAPTER XXXVII.—INDIRECT TAXES..... 539

Sec. 465. Excise. 465 (a). Taxes may Limit Dangerous Pursuits. 466. Duties. 466 (a). Encourage Home Production. 466 (b). Tariff Wars. 466 (c). The Foreigner Sometimes Pays the Tax. 466 (d). Early American Experience. 466 (e). From the Revolution to the Civil War. 466 (f). Since the Civil War. 466 (g). Industrial Effects. 466 (h). Both Parties Corrupted. 466 (i). Tariffs Tend to Expand. 466 (j). Protection and Wages. 466 (k). Numbers Concerned. 466 (l). Gluts. 466 (m). Effect on Trusts. 466 (n). Conclusions. 466 (o). Causes of American System. 466 (p). Expert Opinion on American Method. 467. Stamp-taxes. 467 (a). Both Direct and Indirect. 467 (b). Often Merely a Petty Nuisance.

CHAPTER XXXVIII.—INDIRECT TAXES (Continued)..... 556*General Conclusions.*

Sec. 468. Indirect Taxes Expensive to Pay and to Collect. 468 (a). Hard on the Poor. 468 (b). Stimulate Corrupt Legislation. 468 (c). Fail to Stimulate Interest in Government. 468 (d). Why They are Popular. 468 (e). Summary for and against.

CHAPTER XXXIX.—INQUISITORIAL DIRECT TAXES..... 562*Income and Inheritance Taxes.*

Sec. 469. Direct Taxes Divided into Inquisitorial and Obvious. 470. Income-tax. 470 (a). Falls Only on Successes and Active Property, 470 (b). and is Proportioned to Ability. 470 (c). Like All Inquisitorial Taxes, a Premium on Lying. 470 (d). Violates Rights of Privacy. 470 (e). Generally Doubles Taxation. 470 (f). As Illustrating Progressive Taxation. 470 (g). Discrimination of Sources. 470 (h). As Equalizing Fortunes. 470 (i). As Offsetting Injustice in Other Taxes. 470 (j). Out of Proportion to State's Services. 470 (k). Taxation versus Benevolence. 470 (l). Taxing away Business and Benevolence. 470 (m). Characteristic of Militarism. 470 (n). Heaviest on Those Least Able to Bear It. 470 (o). Approved Only as a Necessity. 471. Inheritance-taxes. 471 (a). Collateral not Very Objectionable. 471 (b). Conclusions.

CHAPTER XL.—INQUISITORIAL DIRECT TAXES (Continued) .. 573*Personal-Property Tax.*

Sec. 472. Personal-property Taxes. 472 (a). Uncertain of Diffusion. 472 (b). Tend to Double Taxation. 472 (c). Ef-

fect on Prosperity. 472 (d). Personal Property Hard to Find or Appraise. 472 (e). Views of Authorities and Operation of Natural Laws. 472 (f). Showing of Statistics. 472 (g). "Publicity" a Foolish Means toward a Foolish End. 472 (h). "Homogeneity" Fallacy. 472 (i). Effect on Corporations. 472 (j). Cause of Prejudice. 472 (k). As Affecting Franchise and Non-franchise Corporations.

CHAPTER XLI.—OBVIOUS DIRECT TAXES..... 586

I. The Realty-Taxes in General.

Sec. 473. Objections to Realty-taxes. 473 (a). Their History. 473 (b). Incidental to High Civilization. 473 (c). Question of Diffusion. 473 (d). Views of Economists. 473 (e). Fact versus Theory. 473 (f). Effects on Producers. 473 (g). Stimulate Production. 473 (h). Sure to be Paid, 473 (i). and Easy to Assess, 473 (j). and Cheapest to Collect. 473 (k). All Owners must Always Pay Part of It. 473 (l). Summary for and against the Real-estate Tax. 474. Real Estate under Poor Government. 475. Opinion of the Fathers. 476. Equalization. 476 (a). Remedies Proposed.

II. Varieties of Realty-Taxes.

477. Realty-tax, Single Tax, Separated Tax, Appropriation-tax. 478. The Single Tax. 478 (a). Locke's Theory. 478 (b). Walpole's. 478 (c). Diffusion on Different Grades of Property. 478 (d). Local Option in Taxation. 478 (e). Effect of Single Tax Suddenly Imposed. 478 (f). Experience. 479. Separated Tax on Land Exclusive of Improvements. 479 (a). Buildings Diffuse Taxes More Readily than Land. 479 (b). Nevertheless Separated Tax Encourages Improvement. 480. Appropriation-tax.

III. Rental-Value Tax.

481. Rental-value Tax is on Consumption. 481 (a). Not a Real-estate Tax. 481 (b). Not Double Taxation. 481 (c). Should be on One Residence Only. 481 (d). Shifting.

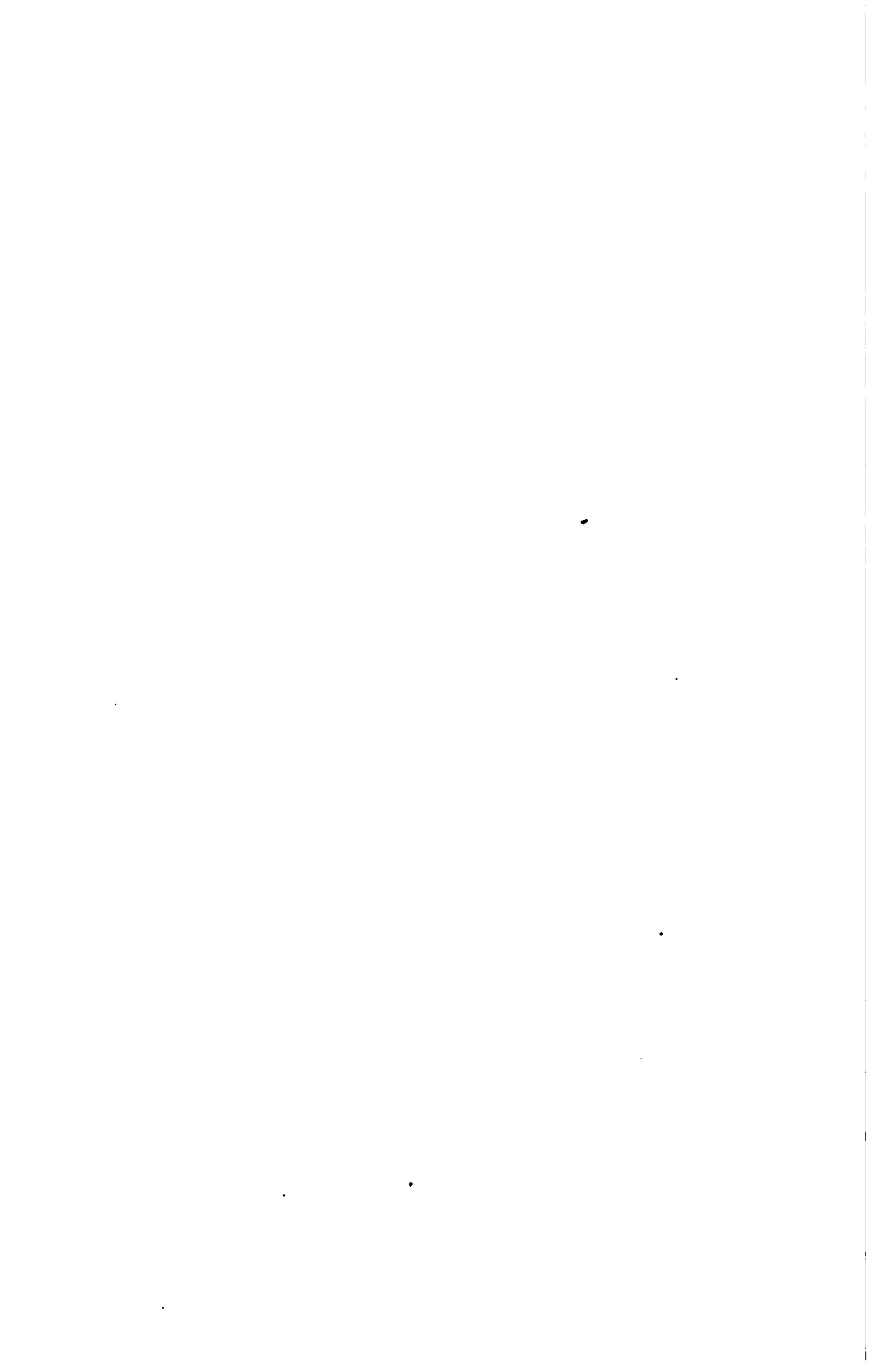
IV. Franchise-Tax.

482. Has the Characteristics of a Real-estate Tax.

CHAPTER XLII.—DOUBLE TAXATION..... 608

Sec. 483. Taxation of Mortgages. 483 (a). Mortgage a Debt, not a Value, 483 (b). and Value Alone should be Taxed. 483 (c). Mortgagor Generally Pays Tax Indirectly. 483 (d). Mortgage not Properly Real Estate. 483 (e). In Different States. 483 (f). Letting Mortgagor Pay Mortgagee's Tax. 483 (g). Conclusion. 484. Why Tax Mortgages and not Notes? 485. Tax All Recorded Liens "at the Source", and Deduct Them from Value of Property. 486. Multiplied Taxation, Especially by Excises.

CHAPTER XLIII.—SUMMARY AND CONCLUSIONS ON TAXATION.....	615
Sec. 487. Perfect Taxation not for Imperfect People. 488. Vampire-taxes Needed Now. 488 (a). The Rental-value Tax may Ultimately Replace Them. 489. Inquisition-taxes In- tolerable. 490. The Remote Ideal. 490 (a). Nature Pays Some Taxes, 490 (b). and can Pay All. 490 (c). A Question- able Objection. 490 (d). The Future of Taxation. 490 (e). No Hardship to Landowners. 490 (f). Amortization. 490 (g). A Boon to the Poor. 490 (h). How to Include All Citizens. 491. Causes of Delay. 491 (a). Ignorance and Self-seeking. 491 (b). In the U. S. Constitution.	
CHAPTER XLIV.—GENERAL SUMMARY AND CONCLUSIONS..	624
Sec. 492. General Conclusions regarding the Civic Relations. 493. The Questions for Experts. 494. Evolution of the Civic Relations, 494 (a). and of their Problems. 494 (b). Rapid Ac- cumulation of nostrums. 495. The Labor Trust. 496. The Labor Question a Real Question for Real Reason. 497. Ag- gression Begets Aggression. 497 (a). Evolution of Vices in Government. 498. Improve Suffrage. 499. Evolution not All Negative. 499 (a). Even the Desire for Wealth Beneficial. 499 (b). The Struggle for Existence Ceasing to be a Brute Struggle. 499 (c). Wisdom and Sympathy Gaining Control. 499 (d). They cannot be Forced. 499 (e). Their Necessary Creed.	
INDEX.....	633



ON THE CIVIC RELATIONS.

PRELIMINARY SURVEY.

CHAPTER I.

SOCIETY'S CONTROL OF THE INDIVIDUAL—GOVERNMENT.

i. Introductory. Unless the student has grown up where discussion of the civic relations is more frequent than in most homes, he is apt, before studying them, to regard them as matters of course, just as uninstructed persons regard light and air; and to realize their importance as little. Such indeed is too often the state of mind even of persons who take an interest in what usually passes for "politics"; and it can hardly be called rare even among those holding political office. And yet it is certainly true that to civilized men, nearly all that makes life worth living, depends upon the civic relations, as much as life itself depends upon light and air.

Virtually all good things must be paid for in effort and self-control. This is no more true of the foods that the simplest savage must gather, and of the portion which he must deny himself at the moment, and lay away for a rainy day, than it is true of the benefits derived from the civic relations in the most advanced communities.

Not all men have the character voluntarily to per-

form the labors, and impose upon themselves the control, called for by their civic responsibilities: consequently an important element of civilization is a set of opinions, usages and institutions whose function is to develop and stimulate and control men, so as to insure their performance of the duties essential to the general well-being. We shall have occasion to touch upon nearly all of these opinions, usages and institutions, but our space will permit detailed attention to but one of them. Before proceeding to it, however, we would do well to glance at the most important of the others.

2 (a). through the family; First among these is the Family, where the civic relations begin, and where each character that is to play its part in them, well or ill, gets its direction and much of its development. Civic relations begin with, and even before, the child's first breath; and do not end until the last pennies of whatever estate he may accumulate, are divided among his successors. And yet so unconscious of all the facts just indicated, are even many intelligent people, that it was lately possible for an eminent, and deservedly eminent, authoress, who had been advocating great freedom of divorce, when asked: "And how about the children?" to answer. "Oh, I had not thought of them!" This, however, was before the recent reports from city police authorities, notably from those of Chicago, gave a most suggestive illustration of the importance of the home, in the fact that an astoundingly large proportion of juvenile (and why not adult?) crime and pauperism is found among the children of divorced parents. While the home is generally recognized as the chief seat of happiness, its immeasurable importance as the very cornerstone of civilized life, is seldom thought of—as seldom as the importance of the state holding it together, in spite of alienation and wrong, as long as human nature can reasonably be called upon to endure the strain. But a full treatment of this important and neglected topic cannot come within the limits of this treatise.

Neither can that of another topic of almost equal
2 (b). through public opinion; importance and interest—the effect on civic relations, of general opinion—class opinion and public opinion. Class opinion makes the heart-wrenching question of who a person's associates shall be, often depend upon such apparently trivial points as the color of a cravat or the handling of a table-knife; opinions held in trade-unions extend up to such questions as whether a people shall freeze or starve, with reason or against reason; public opinion is probably a stronger motive than self-respect, in making a man keep his clothes brushed; and public opinion leads to the payment of more debts, a million to one, than the law does. But even the colossal influences of opinion on the civic relations, cannot be treated here any more fully than can those of the home.

2 (c). through imitation; There is a third influence in the civic relations, perhaps as powerful as family life and public opinion, which deserves mention, but can here be given little more, tho it has lately been the subject of volumes. I mean imitation—the tendency to do the things which others do—things all the way from, on the one hand, wearing cravats, and in particular circles, particular cravats, up to respecting the integrity of each other's throats inside the cravats; but on the other hand, leading peaceable people to join in lynchings because others do.

2 (d). through education; The control of the civic relations by education, is worth mentioning, too, but cannot be gone into in detail here, tho it will be touched upon more than once later.

Contenting ourselves, then, with the mere mention of those four controllers of the civic relations—the family, public opinion, imitation and education, let us proceed to a fuller treatment of one which, while it is in some respects more powerful than any, or even all, of the others, is fortunately in many respects much easier to understand. It is that massing and arranging of *2 (e). through government.* the opinions and powers of the people, called the Government. In a very primitive community, the

government may seem to be rather the opinions and powers of one strong man; but his strength consists in bringing under his own control, the faculties of all; while in advanced communities, and indeed as a test of their advance, the control is less in the hands of one or a few, and more in the hands of all.

Our chief topic, then, tho we shall not avoid the others indicated, will be the Civic Relations under Government.

3. Civic Relations Probably the intelligent reader will have defined. I have already noticed a gap in the system of exposition: I have been writing very freely about the civic relations, without having yet attempted to tell, with any precision, what they are. The omission was not altogether unintentional. The reader's own mind has probably extracted from his previous knowledge, and from what has already been said, a notion of them that it will now be easy for him to make more precise. The word *relations* requires no definition. The word *civic* is one of a group evolved from the Latin word *civis*—a citizen. All the words in the group relate to the consequences of people living together in society, and they range in meaning from "city" up to the "civility" which city life is supposed to breed. It may be asked: Why will not "political relations" do? Why do we want the comparatively new-fangled word "civic"? One reason is that, other things even, two syllables are better than four; a better reason is that, tho our fortunate language is often enriched by both a Latin and a Greek word for the same thing—just as we have "civil" and "civility" and their like, from *civis*; and "political" and "polite" and "polished" and their like, from *polis*, yet the bottom meanings of the words "civic" and "political", or "civil" and "polite", are not the same. The fact is that whenever we start with both a Latin and a Greek word originally meaning the same thing, we soon get to applying them to different things. A boor can be civil, but it takes a gentleman—a natural one at

least, to be polite—polished; politics really means the art of civil government, but perhaps more often merely the art of obtaining office or spoils, while civic really covers all matters affecting a man as a member of society, as distinct from purely personal and domestic matters: it embraces all that political does, and, in addition, law, economics, sanitation, public education, public art, and other subjects, all of which it would be a stretch of language to include under politics, tho politics *may* touch them; but government *must* touch them. We will then define "Civic Relations" to mean the relations between people living together, especially as they are affected by government. Let us approach them, then, through government, by the way of a few simple illustrations.

4. Government's functions illustrated. If a person going out on a bicycle, finds the roads rough or dirty, the fault is the government's; if somebody knocks the rider down and takes away the bicycle, if the victim could obtain no redress, the fault would be the government's; if a foreign enemy in time of war, robbed him of his machine, the fault would be the government's; if he bought a bicycle from a man who represented it as something different from what it was, in case he could not peaceably obtain money equal to his damages, or make the exchange for one as represented, the fault would be the government's; if he sold the bicycle to a person with plenty of money, and could not peaceably make him pay, the fault would be the government's.

5. Government's functions classified. These cases, if carefully considered, will be found to illustrate the two great divisions under which the functions of government come—the protection of our rights—as against each other and against foreign aggression; and the promotion of the general convenience, as illustrated in the roads and other objects of government care. Some writers make a third division—the enforcement of contracts—like those for buying and selling the bicycle. But that really belongs under the head of the protection of rights.

Let us now consider more in detail what is meant by **5 (a). Protection of Rights.** rights and the protection of rights. Every one has a right to the safety of his person and property, and that people should live up to their contracts with him, if he lives up to his with them. It is the business of government to protect these rights. Of course protecting rights promotes the **5 (b). Promotion of Convenience.** general convenience too, but there are far other functions of government, which more specifically promote the general convenience. It usually lays out the streets and paves and lights them, regulates buildings so as to guard against fire and, in some European cities, so as to secure a reasonable amount of sunlight in the streets, and pleasing architectural harmony. Government also often provides the machinery for putting out fire; regulates the liquor traffic so that a man shall not be tempted to drink too much, and abuse his family, and perhaps commit murder; shuts up stray animals in the pound until their owners get them; looks after water-supply and drainage and public health; provides public schools, parks, libraries, and sometimes museums; and coins money and carries the mails. The difference between all those functions for the public convenience, and the protection of rights, is that none of those conveniences are directly in the nature of protecting person and property from attack, or punishing for such attack, nor yet of forcing people to make good their contracts.

5 (c). Taxation. There is still a third class of functions essential to the performance of the other two classes, namely: getting the wherewithal—taxation.

These three classes—protecting rights, promoting convenience, and getting the money for so doing, through taxation, include all the functions of government.

6. Some general results of bad Government. We have seen, then, that crime, unfulfilled contracts, and bad systems of taxation (which are worse things than the novice is apt to realize) as well as bad roads, bad drainage and resulting disease, bad conflagrations wide-spread drunkenness, are all the fault of bad

government. Now if such things happen very often in a place, of course people will not want to buy property there, and so houses and lots will be sold for very little. Yet this works both ways: for while bad government has often made prosperous places deserted and poor, a return to good government has often made such places populous and rich.

**7. Responsibility
for bad
Government.**

Therefore, in a free country where everybody can vote, if a place suffers from bad government, it must be the fault of the people themselves. But why should people suffer from bad government, when their own votes make the government? For just the same reason that people suffer from poverty and disease—usually because they are ignorant, self-indulgent, dishonest and lazy; sometimes, tho comparatively seldom, because they are unfortunate.

**8. Good Govern-
ment requires
Intelligence,
character and effort.**

Ignorance leads people to suffer from bad government, because government is one of the most difficult things men undertake, and ignorant people are apt to vote for ignorant people to carry it on. They do this not only because they do not know any better, but also because they prefer to be governed by people of their own kind. Ignorant people too often hate to acknowledge anybody as superior to themselves. It is only as a man grows wise, that he grows able to appreciate wisdom in others, especially when it is greater than his own.

Dishonesty leads people to suffer from bad government, because dishonest voters can be bribed, or tempted in some other way, to vote for dishonest officers.

Laziness makes people suffer from bad government, because those who know something of what good government is, and what capable officers are, are often too lazy or too absorbed in their business or pleasure, to work to get good government. Many educated people do not even vote. Yet we have to work to get good government, because there are always many ignorant, dishonest and selfish people working to secure bad government. True, it is their own government,

and they have to suffer with the rest of the community, but the dishonest and selfish are, at bottom, stupid. A dishonest man, no matter how bright he may be in some ways, is always at bottom just what Solomon says he is—a fool. This, too, despite the fact that dishonest men often get rich and powerful. But frequent as such facts are, they are far from being the rule. Many successful dishonest men have plainly shown that they were miserable, and it is fair to believe that at bottom they generally are. A great artist who had painted the portrait of a rich scoundrel, said that the face was the most miserable he had ever seen. On the other hand, if such people are poor (and dishonest people are not apt to get rich) they generally sell their votes, supposing that the money they get for them, or the favors they expect if their friends are put in power, will be worth more to them than good government would be. Probably if all could be known, it would be found that they never estimate correctly. No sensible man would think that any other human thing can help him do the best for himself, as much as good government does: for government affects almost everything a man does.

9. *Extent of Government's Influence.* It decides whether every step he takes and every wheel he rolls, shall go with comfort or with difficulty, whether every cent he spends shall be spent to good advantage or poor, whether every second he lives shall be one of danger or security, and, in cities, whether every breath he takes shall be health-giving or dangerous.

9 (a). *Illustrated by Money.* So far, we have barely alluded to the money which is spent by the government. But the government affects the worth of *all* money—determines to a great extent how much a man shall get for every cent he spends. If a government is honest and capable, its expenses will be low in proportion to the good it does: so taxes will be low, and taxes enter into the cost of everything—a landlord has to pay taxes on a store, for instance, and adds them to the rent; and so the storekeeper has to add them to the prices of the goods sold in the store. Thus prices will be

made high by high taxes, and each man gets less for his money.

Moreover: government manufactures the money, and if it manufactures bad money (as ours has done twice since 1860), a man cannot buy as much as he ought to with it.

GEOGRAPHICAL DIVISIONS OF GOVERNMENT.

10. Each citizen lives under several governments. So far, we have spoken of government as if it were but one organization—as if we lived under but one government. But Americans generally live under at least four—local, county, state and national. How much territory the local government covers, mainly depends on the thickness of the population. In New England and the Middle States, the local government generally covers a township, but often only a village or a city. In the Western and Southern States the local government often covers a whole county, or even more. We should note, in passing, the most striking differences between a town, a city and a village. A village or a city is always a collection of buildings; a town (in the American sense, not the English) may contain no buildings at all, or only scattered ones, or it may contain villages or even cities. A city is sometimes called a town, but that is only a fashion of speaking, just as men, women and children are alluded to as part of *mankind*. Although Americans generally live under at least four governments, they sometimes live under more—under both town and vil-

11. Overlapping of local governments. lage, or city, government, as well as county, state and national. Sometimes, too, even - the school districts of a town attend to more of its local affairs than merely those of the school, and really constitute additional governments. On the other hand, sometimes the whole township is covered by a city, and even, in rare cases, it has both a town government and a city government. Generally, tho, in such cases, the city government replaces the town government. But when the city covers the whole county, as a

few of our leading cities do, both city and county governments generally continue side by side. On the other hand, in very thinly populated regions, something like the reverse occurs—the county is sometimes the smallest political unit, and performs what functions of a local government are necessary. Then people live under but three governments—county, state and national.

12. Functions of local government. Ordinarily, local governments do (or neglect to do) the laying out of such streets and roads as are too short to come under the jurisdiction of the wider governments; and do whatever grading, paving, sewerage, sidewalk and policing the streets and roads may have. They also punish such offences and settle such disputes as are too petty to come before the wider governments; regulate building and protect against fire; sell licenses for some trades; look after the schools and the poor and sick; grant permits (in thickly populated regions) for public vehicles; and sometimes supply water, light and other conveniences, or else grant franchises to companies that do supply them.

13. Of County government. The county is mainly an organization for the administration of justice better than it could be done by smaller local governments. The county generally provides better courts, jails and often almshouses and hospitals, than the minor governments could afford, and gives all its localities the use of them. At the county seat, too, it generally keeps the records of the real-estate transfers, and other important documents. The county also sees that the longer roads are properly laid out and cared for. When a city overgrows the county, and there are no little local governments, there is still need for all the more elaborate courts, records, etc., and the county government is generally kept up along with the city government.

14. Of State government. Of the state government, some people in the cities are beginning to say that its main function is really to enable the country to milk the cities—to give country legislators, who are in the majority, the chance to lay an undue share of

the state's taxes onto the cities, and to give them also the chance to get bought off (or on) regarding all sorts of legislative "strikes" against the cities. What the state government professes to do, however, is, in regard to justice, something for the counties like what the counties do for their small local governments—it provides a high and expensive grade of courts to which important cases can be taken from all over the state, especially cases that are appealed from the lower courts. It also provides prisons, and often reformatories and insane asylums, better than any that any one county could ordinarily support; it regulates the roads and railroads that pass through several counties; and what is most important of all, it passes laws regulating personal rights and property rights over the whole state, so that if a man wishes, he can deal safely with a neighbor who lives, or owns a piece of property, more than a mile or two from the place the former lives in, because the same law judges for both, if any difficulty arises.

All the local and county governments can pass only such ordinances, and judge only in accordance with such laws, as the state government approves—in short, the state government controls them.

Now the state government itself is not, like the local and county governments, under the control of any higher government, except in the particulars where it has combined with the other states to make the nation. In so doing, each state gave up to the nation a carefully specified portion of its powers, but reserved all the others. There is a pretty distinct line between those given up and those reserved. Roughly speaking, there are but two fields in which the citizen's rights are regulated, not by the state, but by the nation: first, so far as his rights are affected by other nations; and second, as we shall see more particularly hereafter, so far as they come under certain broad principles of liberty which the United States is to maintain if any state should fail to do so. But these principles have become so much matters of course in the Anglo-Saxon

race, that probably there is not one case in a hundred where a man's rights are not practically under the care of his state rather than of the nation. In the vast majority of cases, the state is still sovereign, as it was originally—so entirely that the terms "government" and "state" are still interchangeable.

The expression "roughly speaking" may have been noticed in the last paragraph, and it is well worth while to realize before we go deeper, that Civics cannot be as exact as Mathematics. Our civic relations depend on human nature—the most complex and uncertain topic we know anything about—and upon human nature in many men, at that. So many influences are at work, that there are apt to be different elements in cases that appear alike; and therefore such cases sometimes turn out very differently. But investigators have found plenty of principles that are true in most cases—but true only "roughly speaking", or "by and large". We will generally take the exceptions for granted, however, and not stop too often to allude to them. But just here we are met by a very important fundamental question, to which the best answers yet framed, are found to be "in the rough", or "by and large". A few lines back is the expression: "the state is still sovereign".

15 (a). Sovereignty. Now what does sovereign mean? As a noun and an adjective, its meanings differ. The king of England is a sovereign, and yet he is not sovereign, but the people are. The Czar of Russia or "the king of the cannibal islands" is both a sovereign and sovereign.

Our national government, as already said, is sovereign over the states only in certain particulars carefully specified in the Constitution. But through that sovereignty, it makes the *United States* a great and powerful nation, instead of a group of little states on any one of which any petty nation could impose, and which would be apt to impose upon one another. To prevent that, the national government provides courts before which, for instance, "little Rhody" may obtain justice in any dispute with big New York; and it also

regulates commerce between the states. The government of the United States as a great nation, regulates our relations of commerce, peace and war, with all other nations. Hence it provides custom-houses, and army and navy; makes laws regarding naturalization of foreigners; and protects our citizens trading or traveling in foreign lands. It also guards the coast, by lighthouses and harbor improvements as well as by ships and forts. Moreover, as it is a great convenience to have the same money, the same weights and measures, and the same mails, over all the states, the national government provides and regulates them. It also secures to inventors and authors the fruits of their labors by patent and copyright laws good over the whole of the United States, and has arranged for like security over most foreign civilized territory.

DEPARTMENTS OF GOVERNMENT.

16. *Legislative, Judicial, Executive.* So much for a hasty preliminary survey of our various American governments as geographically determined. Now let us take a similar glance at their individual make-up. Roughly speaking, they have these prominent features in common with each other and with all civilized governments:—they make laws, decide what laws apply to particular situations, and see that those laws are carried out. Those three functions are called Legislative, Judicial and Executive.

Now to understand these three functions of government, let us inquire: What is the advantage of having rights protected by government? Does not every man understand his own rights better than anybody else can? Why not leave each man to take care of himself? The bottom reason perhaps is in the answer to the second of those three questions. So far from it being true that every man understands his own rights, it is proverbially true that no man is a fit judge in his own cause: so one of the most important functions of government—a subdivision of its protection of

rights, is providing unprejudiced judges to determine, when a man's rights are in dispute, what they really are.

But after courts, with judges and juries, have determined what a man's rights are, why not let him go for them himself? Because it would depend largely on the size of the other man whether he would get them, and nearly every lawsuit would end in a fight, perhaps a killing, perhaps a long family vendetta. They did so quite generally in the first few hundred years where we get glimpses of the ways of our Saxon and Norman ancestors, and still do in the primitive parts of our country, and in primitive countries generally. It would be almost as well to have the fighting come before the lawsuit as after it, and save the expense of the suit.

To make the machinery for finding judgment of much use, there must be machinery for executing it, and machinery so powerful that the losing side would not think of resisting. In advanced societies, this power
^{17. Sources of Government.} is that of the whole community, behind the officers of the law. In our own country, the humblest rural constable can call upon every citizen at hand, to help him enforce the law. If they cannot do it, he can send for all officers within reach, with such citizens as they can bring; if the resistance is still too strong, he can call upon the governor for every militia company in the state; if the resistance is too strong for them, the governor can call upon the President of the United States for its whole army and navy; and if they are not large enough, the government can enlarge them until every loyal citizen is in the ranks.

If not enough citizens are loyal, of course the affair would amount to a revolution, and the resisting side would overcome the government and set up a new one. In fact, when people, like our neighbors in South America or our friends in France, get into an uneasy state, revolutions sometimes start in that way—in some petty quarrel, and spread until the whole state is involved. But in such cases, the community must already

have been in irritated division over the question at issue.

But great as is the need for a judicial department to determine rights, and for a strong executive to protect them and enforce duties, there is another reason almost as good, and in some aspects better, why a strong executive is needed. If the executive is strong, there is very little protecting or enforcing needed. People come down quietly, as the 'coon did when he saw that the man behind the gun was Davy Crockett; and what is more important still, they do not go up—they behave themselves generally, because they know it will not pay to do anything else.

We seem to have found reasons enough for the judicial and executive departments of government, but in a primitive government, there are not even that many departments; the chief, with the men he can get to do his will, is the whole establishment; but a government highly organized (or highly differentiated, as the philosophers say) is split up not merely into the two departments we have already found necessary, but also into a third—the legislative, which makes many of the laws that the other two departments respectively judge under, and execute. A separate legislative department is always the last one evolved: for the priests always make a judicial department early; but the chief ruler—king or whatever he may be, always keeps the law-making power in his own hands as long as he can. He still holds it in Russia and Turkey.

18. The three
departments illus-
trated in civil and
criminal suits.

Now to illustrate how the three departments work, take the man going out on his bicycle. He breaks his wheel because of the roughness of the road, tries to get redress, and proceeds to sue somebody. He finds out that under laws passed by the state legislature, it was the duty of the men owning on the sides of that particular road, to keep it in order: that is step first—a law has been *passed*. Now it needs to be *applied to the case*: our bicyclist goes to the man owning on the side of the road where the damage was done, and the man says: "I

don't take care of one side of the road. My opposite neighbor and I agreed to divide it lengthwise. We take fifty yards apiece. Your accident occurred on his fifty yards." But the neighbor says: "Nonsense: the accident did not occur on my portion of the road: I won't pay.' Then the bicyclist may have to go to court to see which man is responsible. That is step second—determining how the law fits the case. When the judge, after hearing all the evidence, determines that point, he may decree that one man or the other owes the bicyclist ten dollars. Then comes in the third step—*executing* the law: if the man does not pay, the sheriff comes in and sells some of his property, and pays the bicyclist out of the proceeds; and so are finished up the three general functions of government—providing the law, fitting it to a case, and enforcing it. Such a suit, when nobody is on trial for a crime, is called a civil suit.

Now to illustrate a criminal trial: Somebody knocks the bicyclist down, and takes his wheel. The state government has *provided laws* (step first) punishing violence and robbery. The local government has a policeman or constable to arrest the offender; it has also a magistrate to determine what laws he has violated, and whether the punishment they decree is one of the slight ones that a local magistrate can inflict, or whether his case is so serious that it must be tried in a more important county court. After the offender is tried in one or the other, and the *law in his particular case is declared* (step second) and his punishment is decreed, the third step is taken—the law is *executed*—the local policeman locks him in the station-house for a day or two, or the county sheriff takes him to jail for perhaps a month, or the state officer receives him into the penitentiary for a longer period.

In America, the town government, or sometimes the county, is generally first evolved. Either of them starts in a mere collection of farms. At first, all the voters get together to *legislate*; they also select a magis-

19. Legislative, Ju-
dicial and Executive
functions in local
government.

trate to *judge* in disputes and crimes, and a board of "selectmen" (generally three), and perhaps a constable, to *execute* or *administer* the laws.

As population increases, so many questions arise that people generally cannot come together often enough to settle them all. Moreover, when there are very many people, they cannot hear each other speak, and cannot readily count the votes. Under such circumstances, they usually divide up into smaller bodies, each of which elects one man to represent it in a gathering of all the representatives, and there to decide matters of government for all the people. Thus a village generally *legislates* through a representative board of trustees, who pass ordinances about the streets, bridges, local health, etc., but they must do this in accordance with general laws laid down by the state legislature. A village also has its own magistrates to *judge* under the state laws determining personal and property rights: thus they settle petty quarrels and punish petty offences, or send the offenders to higher county or state courts. The village also has an *executive* or *administrative* head (the terms executive and administrative are interchangeable), in the president of the board of trustees, who is assisted by commissioners for streets, fires, health, etc., to execute the ordinances of the board of trustees (legislative department), and the president is also helped by policemen or constables to execute the decrees of the magistrates (judicial department).

A city government is generally composed of *legislative* bodies (known in different places as aldermen, councilmen, etc.)—sometimes of two chambers, to pass laws regarding local matters; of *judicial* courts as well—not only those of the magistrates, but additional ones of a higher grade; and a mayor with a considerable body of assistants to see that the laws are *executed*.

20. The functions in Counties. The counties do not have any law-making assemblies for the direct purpose of legislation, tho the bodies known as Supervisors

or Commissioners really have considerable legislative power over taxes, roads, care of the poor, etc. Generally speaking, however, outside of these officers, county governments are, as said before, merely organizations for the administration of justice. They have no law-making body, but only two sets of functionaries—the judicial, consisting of judges of courts and their assistants, to apply the laws which the state legislature makes, and to record legal documents; and also twofold executive bodies: first, the sheriff and his assistants, to carry out the law after the courts declare what it requires in each case; and second, commissioners to care for the roads, court-houses and other county buildings.

21. The three functions in States. The state government has the "full kit"—legislative, judicial and executive.

The legislature generally (universally, so far as I know) consists of two bodies, both of which have to concur to pass a law: their laws provide for the care of person and property over the whole state, and are applied by local magistrates, city courts, and county courts. Then the state has its judicial bodies—the state courts, which generally hear cases appealed from the county courts, and also determine whether laws passed by the legislature are according to the agreement of the people under which the state was primarily organized (generally called the Constitution, 79 *); and the state has also its executive body—the governor and his various assistants, who see that the general laws passed by the legislature, and the particular applications of them determined by the judiciary, are executed. Some state governments can remove local officers who fail in this regard.

22. The same functions in the Nation.

The United States government has the same general tripartite organization that the minor governments have—the legislative body, consisting of two houses of congress; the judicial body, consisting of United States courts

* The cross-references indicate numbered sections, not pages.

scattered all over the country, and a supreme court at Washington to try appeals from them; and finally an executive body to carry out the laws and the decisions of the courts. This executive body consists of the president; his cabinet; all the national civil service in the departments at Washington, in the mints, custom-houses and post-offices, all over the country; the army and navy; the lighthouse and coast life-saving service; and many other divisions.



BOOK I.

THE PROTECTION OF RIGHTS.

CHAPTER II.

OF RIGHTS IN GENERAL.

Of the three general functions of government—protecting rights (including protecting them against a foreign enemy), promoting convenience, and taxing for its own maintenance, protecting rights was evolved first, because, in early societies, before some progress has been made in civilization, there are no conveniences to promote. A result, then, on the body of Law and Political Science evolved even up to our day, is that it deals mainly with rights. The functions of government in promoting the public convenience have been evolved so late in comparison, that they are not nearly so clearly understood; in fact, comparatively little attention was paid to them before the middle of the nineteenth century.

23. Rights Impose Duties. First, then, to take the greater field—that of rights, let us try to understand the interesting fact that all rights impose duties—duties on others, and also duties on oneself. They impose duties on others, because a right is, of course, a power justly to demand that somebody shall do something or refrain from doing something; and this doing or refraining on the part of somebody, in response to a right demanded, is of course a duty.

Whether the demand and consequent obligation are just, is determined by "the greatest good of the greatest number". What that is, is declared not only in all religions, but by the general experience of mankind.

24. "Greatest happiness principle and its application in the three kinds of law.

But the religions differ, and so do the opinions of mankind. Who, then, shall judge? Each nation has its own dominant religion and dominant opinions. In proportion to the advance of a nation, its opinions, religious and secular (which generally correspond pretty closely), are embodied in customs and laws. Of course men's convictions of right must be matured before laws are made to enforce them: so there are always moral rights acknowledged by good men, which have not yet become legal rights. As fast as legal rights are established, priests and judges apply them to the cases that come before them, being guided, in very advanced races, by a body of Law made up, (first) of recorded opinions and enactments that have been applied to similar cases, and piecing out such opinions to fit new cases. The body of these opinions is called with us the common law; (second) of statutes passed by law-making bodies, called statute law; and (third) of decisions and practices (like those of the treasury, the custom-house, and the post-office) arising in the course of executing the laws. The body of these last is called the administrative law. Thus rights and duties are declared and enlarged, and the power of the whole society, directed by the government, is exerted to defend the rights and enforce the duties.

Yet priests, judges, legislators and rulers are human, and the system and its workings are hampered by human imperfections. They have improved immensely, however, in recorded history, and, taking the race by and large, are improving every day. The plain way of improving them faster among us, is by improving each man's sense of civic duty—so he will follow only wise priests, and vote for only good judges, legislators and rulers—if that is a "plain way". If such persons

were always in authority, they would keep legal rights closer up to the best convictions of moral rights.

25. Rights and duties imply each other. One's rights impose duties not only on others, but also on oneself, because a man

cannot justly expect other people to grant his rights unless he grants theirs. He can assert a right to life or property, for instance, only as he performs the duty of granting other people their rights to life and property. *Why* a man's rights are measured by his duties, we do not know, any more than we know why two and two make four. It is a law of Nature, proved by all human experience. Justice must be reciprocal—must be even to both sides: the goddess holds the scales. The statements of that law that have most influenced the civilized world are, "Do unto others as you would they should do unto you", and "Forgive us our trespasses as we forgive those who trespass against us."

26. Rights classified.

The rights for which our fathers demanded government protection, were summed up in the Declaration of Independence, as the rights to Life, Liberty and the Pursuit of Happiness. There might easily be a worse classification. But classification suggests the idea of scientific treatment. Now as these rights seem to spread everywhere, and yet as you cannot touch or see them, as you can a plant or an animal or a star, the idea of giving them any scientific treatment may seem impracticable to readers who have associated science only with tangible and visible things. Yet what we know about them can be given scientific arrangement, and that is all we can give to what we know of any subject. As to "scientific precision", however, of course we can know some things more precisely than we can others—simple things more precisely than complex things—things of sense more precisely than affairs of thought and feeling. For instance: the most precise science of all—mathematics, deals with the simplest things, mere quantity and position, without any reference

whatever to the infinite number of conditions which, for instance, make the difference between a human being and a stone of the same shape. Again, as a stone is simpler than a plant, we have a more precise science of stones than of plants; and for the same reasons, of plants than of animals; of the lower animals than of the higher; of the animal's body more than of his mind; and of the individual animal's mind more than of the interplay of a number of minds. So we have got to be content with less precision, and consequently more difference of opinion, in studying the interplay of men's souls—their social relations, than in studying almost anything else. Yet we can make a science of them, as I said before, precisely as we make a science of anything else, by getting what knowledge we can, classifying it as best we can, and using our system to help us to more knowledge.

To begin, then: Rights are usually first classified for scientific treatment into Rights regarding Persons and Rights regarding Things. At first sight, the Declaration of Independence hardly followed that classification, but it virtually did: for the rights to Life and Liberty are plainly rights regarding Persons—as against attacks from them, and as embracing duties toward them; and under the rights to the Pursuit of Happiness, we can easily treat separately those relating to persons, and those relating to things.

Personal rights are sometimes regarded as rights affecting one's own person, as distinct from rights affecting one's property. The classifications cross in some particulars, as nearly all classifications do; but while, in this case, one may be no better than the other, we may as well follow the lines laid down by our fathers.

CHAPTER III.

RIGHT TO LIFE.

27. The State's
claims.

The right to life seems too plain to discuss, and yet the state need not always preserve its citizens' lives, but on the contrary, it often demands them—by thousands at a time, in war for its own defence, and even (rightly or wrongly) for its own extension. But even then, it is the state's duty to guard the lives as well as circumstances permit—to give its soldiers the best possible care:—to give them such officers, surgeons, arms, food, and attention of every kind as will bring their lives through war if it is a possible thing.

The state also demands life in other ways than in war. Under the laws of most states, a citizen forfeits his right to his life when he does not perform the duty on which that right rests. If he neglects that duty, and kills somebody else, his right not to be killed is gone, and the state may kill him if it sees fit.

28. Humanity's
claims.

A man has not always a right to his life, even outside of the state's demands on it in war or for justice: it is often a man's duty to risk it for those he loves, and in helping others in danger of their lives; and not only soldiers, but doctors, chemists, miners, engineers and many others,

29. Professional
claims.

must risk their lives to do their mere duty in the professions they have chosen. They cannot turn back from danger when other people's lives are in their hands. The time to turn back is before adopting one of the heroic professions—before

subordinating their rights to life, to their strenuous duties.

30. Life and work. In some countries, Nature, unaided by the efforts of men, supplies the essentials of life, and even the young reader need hardly be reminded that in such countries Nature is an over-indulgent parent, who spoils her children, and does not lead them to civilization. Civilization comes from *work*, and no country has ever become civilized, and therefore (on the very strongest ground we have for any expectation) no country ever can become civilized, where life itself does not depend on work, and where the right to life does not depend upon the right to work; and where, accordingly, the right to work is, to all but those dependent on others, of as much importance as the right to life.

31. The Right to Work. And yet by one of those strange and instructive paradoxes which the thoughtful observer is continually noticing, in the countries where the right to life is most effectively guarded, the right to work is most generally attacked. One of the instructions in this paradox is that, as intelligence and the effectiveness of law advance, the absurdity, not to say the criminality, of attacking the right to work, advances with them. This may help us estimate the reasonableness and morality of both the American trade-union's claim that if a man will not join it, it can properly interfere with his right to work; and its practice, if he does not obey its demands, of burning his house and taking his life.

But it has just been seen that the community has a right to a man's work, even in the most dangerous of all pursuits—in war, and even to his life itself, when the state requires either or both for the greatest good of the greatest number. The trade-union justifies its claim on the same ground—the greatest good of the greatest number. In doing this, as the intelligent reader has probably realized, it simply performs the *saltum* of assuming itself to be

31 (a). Subject only to the State.

"the greatest number"—the state itself, or really, as it often assumes, the superior of the state—a *saltum* which we see it repeating in some connection every day.

Any trade-union is a ridiculously insignificant portion of the state, all of the trade-unionists put together with their wives and children, are less than an eighth of the state, and what they may think for their greatest good, may be for anything *but* "the greatest good of the greatest number", as they are constantly demonstrating by stopping the transit and supplies of the greatest number, and filling the streets of the greatest number with riot, arson, bloodshed and murder.

Probably every war has been based on some similar perversion of logic. Over this one, here and there in America, civil war has been for some time cropping out in little skirmishes between unionists and their attendant hoodlums on one side, and the militia—sometimes even the army—on the other; and there are sober judges who look for an increase of it. Even the greatest philosopher of our time—and perhaps of any time, as he had more experience behind him than any previous philosopher—thought that the fallacy we have been treating, and the others vaguely grouped with it under various vague names (one of which vague names is socialism), will eventually prevail in their chronic war with intelligence; that the victory will be the greatest disaster so far experienced by mankind; and that the first step toward recovery will be military despotism. But Spencer's unsurpassed, perhaps unequalled, greatness, was in the impartial grouping of passionless facts—a purely intellectual process, where there was little room for the bias of temperament. This pessimistic prophecy of his, on the other hand, tho it dealt with a relatively small group of facts, found every one of them hot with controversy; and the interpretation of them was that of an old and lonely man whose attitude toward life had never had the hope-giving influence of children. It is not inconsistent therefore with the profoundest loyalty toward his philosophy, to take a more hopeful

view than he did regarding this passion-laden and (compared with his cosmic generalizations) minor question, and to find much hope in the already visible effects of very recent counter-organization and appeal to the courts.

31 (b). Picketing and Boycotting. The courts try to guard the Right to Work, as they guard any other right. They are now attacking both picketing and boycotting, but there are thousands of ways of making a man's life uncomfortable, and so interfering with his liberty, that the law cannot take hold of.

If the people on whom a man depends for business or companionship, conclude merely not to have anything to do with him, it is pretty difficult for the government to force them to. A marked case was in 1899, when the workmen in Worcester, Mass., would not go to see the local baseball club play, unless it discharged a man who years before had refused to join in a labor strike. The courts could hardly force people to go to see baseball. Yet the law has done much, as will appear later.

A workingman can avoid all this trouble by joining the trade-union and sticking by it, but if he is not free to join or not, as he pleases, he has no liberty. It is as much government's duty to protect him in this liberty as in any other.

32. Duties conditioning the Right to Work. Moreover, when a man claims the Right to Work, of course he confesses certain duties. The most obvious of these are not to interfere with any other man's Right to Work; and to do his own work honestly. Under the first head, the effort to force men to stand idle when others strike, is not only an attack on others' Right to Work, in the very act of asserting the same right for oneself; but what is more ridiculous, if possible, it is an assertion that the strike on hand has not justification enough to stand by itself, without being held up by force.

The other duty of a man claiming the Right to

Work, was said to be to work honestly. In asserting that right, he *confesses* this duty not only to his employer, but also to society, because he calls upon society to protect him in his Right to Work. Society, which buys the laborer's product, really pays him his wages, and has a right to its money's worth.

33. Society's alleged Duty to Provide Work. Beyond society's duty to protect the Right to Work from interference, it has been claimed that society shall *find* work for anybody needing it. But there is a vital difference in the two things—to protect a man from being interfered with in seeking honest work, is to secure him his right to pursue his own happiness; while for society to find work for him, is to take a share of the pursuit of his happiness upon itself.

A more detailed treatment of this whole subject, will be given in a later special chapter on Labor Coercion, and in one on Labor and the Law.

Universal experience has shown that if government attempts to do any more for people's work than to see that they are not interfered with, people get to depending upon government instead of upon themselves, become shiftless and lazy, and ultimately expect government to feed and clothe them and do everything else for them, without their doing any work.

34. The English Poor Law and the French workshops. Probably the most conspicuous demonstrations of this were the working of the English Poor Law in the eighteenth century, and of the French public workshops established after the revolution of 1848.

The Poor Law of 1782 required the guardians of the poor to find work for everybody who did not find it for himself, and to support him until they did. It set the lazy all over the country to living at the expense of the industrious, and to raising large families to get the benefit of the government dole for those who were too young to work. In 1834, England had to return to the old system of supporting only those who were willing to live in the workhouses, and then

people generally became able to find themselves work, and the birth-rate among the useless classes diminished.

A person receiving relief from the state was disfranchised. When this book goes to press in 1907, bills are pending with every prospect of passage—perhaps some have been passed—to give meals to school children without disfranchising their fathers. Old-age pensions are expected next. The extension of the suffrage since the repeal of the Poor Law, has inclined politicians to curry favor with the poor, and similar “relief” will probably be extended until new repeals will be found necessary.

The experience in the French workshops was that men would not hunt for work elsewhere, but flocked to them; other industries became disorganized; the officials could not turn away a man who claimed from the state the Right to Work; shops were filled faster than they could be built; but as the laborers felt sure of their places, they worked carelessly, and soon the whole thing had to be given up.

An attempt has been made to insure people against loss of work. But even that is risky. When Germany forced its railroad employees to insure themselves even against accident, they became careless, and slow to return to work after being laid up.

The moral of all this is that there is no way of superseding Nature's method of advancing man, which is by forcing him to depend upon himself. Every effort to relieve him of that responsibility has led to his deterioration.

But human arrangements are not perfect. There often come times of business depression, when many deserving people who are perfectly willing to work, can find nothing to do. But that is a question of an occasional emergency, and not of the usual state of affairs; and it is more a question of public charity than of public justice. Public charity should be reserved for only grave emergencies, otherwise it does more harm than good. This is illustrated by the experience with public kitchens,

soup-houses, and methods of relief of all kinds that have been thrown open to all comers. Unless such help has been restricted to those whom careful investigation proves unable, for the time, to take care of themselves, it has spread idleness and beggary among people perfectly able to provide for themselves if obliged to. That has always been the case, tho it has sometimes appeared otherwise: for instance, after the great period of enforced idleness of '97, there was a very encouraging evidence that of late years people have been growing in self-reliance. When the unemployed began to get work again, at least one of the free-food depots was shut up because nobody applied. Whether it was a less attractive place than the others does not appear. But it was opened in an emergency, understood to be only for an emergency, and supported only by voluntary private contributions; therefore people did not depend on it as they did on the French workshops.

CHAPTER IV.

LIBERTY.

The right to life, with its concomitant right to work, in a sense belongs under rights to liberty. But the first two are so fundamental as to justify being in a class by themselves: they can exist in the absence of all other rights, while in the absence of them, no other rights can exist.

36. Boundaries of Liberty. There are many definitions of liberty, as of most other important things. Probably as good a one as any, is absence of restraint in the exercise of one's rights. This of course cannot mean freedom to do as one pleases: for no man is at liberty to do as he pleases, if it interferes with another man's right to do any innocent thing that *he* pleases. Let us take some illustrative cases. If I should please to stop a man striking a woman, I would have a right to do it, altho it would interfere with his doing as he pleased: for his doing as he pleased in that way, would be interfering with her doing as she pleased—with her enjoying freedom from pain and injury. If she were his wife, and were wasting his substance, she would be interfering with *his* doing as *he* pleased with his money. But if she were a hard-working woman, and he pleased to waste the money, he would be interfering with *her* right to do as *she* pleased with it. But how could they each have a right to do what they pleased with it, when each might want to do something different from the other? Each would have the right, but it would be limited, as was said a moment ago, by the

other's right. To determine how people are to settle their rights when they conflict in this way, is one of the things that the state is for; but if people cannot settle their rights by themselves or with the help of their friends, they should resort to law, not to fisticuffs.

When people are living together, then, it seems as if the liberty of each must be somewhat curtailed by the rights of the others. This is by no means restricted to husband and wife: all people living near enough to affect each other, must have their liberty somewhat limited by the rights of the others. A

37. Barbarian Liberty and civilized Liberty. man living alone in a forest would be at liberty to shout and sing and fire his gun at any time of night, and shoot in any direction. But if he were living in a community, such conduct would very properly send him to the lockup. Under proper conditions, however, one can shout and sing or fire a gun in the city.

The name given to the conditions that limit the exercise of rights, is duties, as already said. If a man claims the liberty to shout, sing and fire a gun in the city, he has the duties of doing it only at proper times and places—ordinarily in enclosed buildings, or on occasions rightly or wrongly considered proper, like the Fourth of July, and in places where everybody agrees to make a noise. If he claims the right, he admits the duties limiting it. A man's right to enjoy himself admits the right of others to enjoy themselves, and confesses the duty of enjoying himself so as not to interfere with their enjoying themselves.

If a man claims the right to make a noise and fire his gun in the wilderness, if nobody else is there, duties do not enter into the case, because there is nobody to claim them. But if there is anybody else there to make the claim, there arises the duty of not disturbing him or shooting in his direction.

Social duties arise, then, from men living together in societies, and it pays to limit their rights by living together in societies, because they gain vastly wider

and better rights—they can do many things together that they cannot do separately, and because there has been evolved from this habit of living together, a happiness in sociability itself.

When, then, a man calls upon the power of society to protect his liberty,
 38. Duties balancing rights to Liberty. he confesses two duties to society—that of not interfering with the liberty of others, and that of helping to protect the liberty of others, just as he claims that others shall protect his. If he is called upon, he must act as an officer (17) or, as but few men are needed as officers, it is his duty to vote for proper officers, honestly to pay his share of the expenses, and to inform himself so that he can take the right side in all social matters. His faithfulness in performing the duties government requires of him, measures his right to the liberty and the other rights and the conveniences which government provides him.

We have seen, then, that we get the advantages of civilization at the expense of some of the rude liberties of the savage, and it is easy to see that the state has the same right to restrain these liberties that we have seen it has to demand life itself whenever the greatest good of the greatest number requires it. Not only must the insane and the criminal be restrained, but the noisy, the indecent, the filthy and those otherwise disagreeable, must be kept within bounds.

And liberty needs protection not merely
 39. State's right to restrain Liberty. against the corrupt, foolish and disagreeable: sometimes in war, insurrection and riot, the rights of good and wise men have to be infringed upon, even by men as good and wise as Lincoln: for, tho every accused man has a right to a trial, when people may be bearing arms against the government, there is often no time to wait for trials; and moreover, even in a free country at peace, a majority is apt to impose on a minority or an individual. Therefore it is well always to be sufficiently alive to political rights to guard against the slightest infringements. Like "the rift in the lute," infringe-

ments tend to grow. There is reason for the proverb 40. "Eternal vigilance is the price of liberty" (8).

But what is to determine when the state shall invade the citizen's rights? Who is to judge, when rulers or majorities are under temptation? Those are big questions, and cover most of the art of government. Most of this book is to be taken up with them, and so are thousands of other books.

41. Constitutional defences Bill of Rights. In the Constitution (79) of the United States, strangely enough, very little was originally said about liberty. It seems to have been the feeling of the framers that the principles of political liberty had been so firmly rooted in the Anglo-Saxon race that it was not worth while to write down many of them. But when the States were called upon to ratify the Constitution, they thought differently, and asked that certain other bases of political liberty which the race had been working out for over a thousand years, and which all the States then had in their own constitutions, should be written down. Consequently we have them in the first nine articles of the amendments, generally called the Bill of Rights. That name was first given to an English statute enacted after the revolution of 1688, and ever since has been a favorite term for constitutional provisions to protect the individual against the government.

The principal items in our "bill of rights" are (in the Constitution itself *) provision against arbitrary imprisonment, bills of attainder, *ex post facto* laws, unequal taxation, misuse of public funds, and corruption of public officers by giving titles of nobility at home or abroad, or by bribery abroad; also † against wholesale charges of treason, and corruption of blood for it. The first eight amendments provide for free religion, free speech, free assembly, free locomotion, publicity of all government proceedings, prompt and fair trial by jury, the right to bear arms, and freedom from excessive bails and fines.

* Art. I, Sec. IX.

† Art. III. Sec. III.

Many of these rights are so well understood by every American, and some of them can be so much better treated later, that we need consider only part of them here.

A bill of attainder is a mere resolution by a legislative body, such as congress or a state legislature or the British parliament, to convict of crime, without trial. This was a favorite means of tyranny in the days of religious persecution. Our Constitution provides that every person accused of a crime is entitled to a full trial in a court, by jury, and with witnesses that he can cross-question and contradict face to face.

An *ex post facto* law is a law imposing or increasing criminal penalties, or changing the evidence required for conviction, for acts that were committed before the law was passed. Laws imposing such penalties should take effect only upon acts committed *after* their passage:

Free speech, which includes a free press, is necessary to liberty, because a government whose acts cannot be proclaimed and criticised, can easily impose on people. One of the first things tyrants attempt, is to muzzle the press; and even in our country, offices have been given to editors, which of course limits their tendency to criticise the party in power. In political meetings, the majority sometimes refuses reasonable attention to the opinions of the minority, or the rowdy element dominates the peaceful element, and sometimes drives them out; even minorities have sometimes made trouble enough to break up meetings.

The right of free assembly is necessary to liberty, principally because if people could not meet to protest against a bad government, every government would tend to become bad, and it could do as it pleased and hold on forever. Tyrants are all the time breaking up meetings, and bad men often do so even in free countries.

The right to bear arms would naturally be one of the first rights a tyrant would try to suppress. It is not opposed, of course, by the laws in many of our states against carrying *concealed* weapons.

Publicity of all government proceedings secures having all laws debated and passed in public, so that the people may know the reasons for and against, and bring their opinion and the influence of the press to bear on the law-makers; and may also know which men vote for good laws, and which for bad. In courts, publicity is perhaps even more necessary than in legislatures. There is no guarantee that a secret trial will be fair, or a secret arrest justifiable. All the stories of tyrannous times are full of secrecy.

Promptness of trial needs to be secured, because tyrants nearly always delay trials, if they grant them at all, and keep their victims lying in prison. True, accused people sometimes try to put off their own trials, but if they do, with decent courts, it is a strong sign that they are guilty. An innocent man can almost always prove his innocence promptly if he is free to call witnesses.

In our country, the great security against illegal confinement, is the writ of *Habeas Corpus*. The words mean: "thou shalt take the person" (or, more strictly, "the body"), and they are the first words of a writ or writing or order that any judge is bound to issue, on proper application, requiring those who have the custody of any untried prisoner to "take" his "person" promptly into open court to ascertain if he be legally held. It may be questioned whether it is worth while for us to consider such matters—whether we have in America any tyrants to keep in prison any person without proving charges against him. But we have more tyrants than we always realize.

Sometimes a majority is the worst possible tyrant; and in this case, we have the "man with a pull."

42. The man with a pull. In one of the bad wards of New York, for instance, such a man is said to have got the police to arrest, and the magistrates to jail, almost anybody he pleased; tho of course he could not "please" like Richard III. and Henry VIII. to attack prominent people. He is also said to have got almost anybody he pleased, let off by the police and magistrates. We can defend our liberties against

such people only by making government positions depend upon character and intelligence—so that there will not be corrupt police and judges.

^{43. Freedom of} In America it hardly seems worth while ^{Opinion.} to speak of freedom of opinion, because

religious liberty is so well protected, but are we after all free from attack on our liberty of opinion? A man's neighbors are always exerting a silent pressure to make him think and live in their way; and laws favoring one set of private opinions and industries, rather than another, are constantly passed without people noticing them or realizing their bearings. Such are laws dis-

^{44. Laws threatening} tributing charities or school funds with ^{Liberty.} reference to religious opinions, laws mak-

ing it easier to select from one political party than from others, the public clerks and laborers with whose work political opinion has nothing to do; and laws favoring one kind of industry at the expense of others. In such laws the danger of tyranny is greater than in *open* attack on life, liberty and property, because open attack would be understood and resisted by the whole community.

And yet there is wide agitation for laws to interfere still farther with personal liberty. Some people want laws to say how many hours a day a man shall work; what wages he shall receive, whether earned or not; how much he shall lay up and accumulate; and even who shall have charge of factories and stores. The objection to government thus managing labor, is that Nature manages it vastly better. For government to manage it, would take away the test of capacity to manage, and substitute the test of capacity to get office—so that a man might be born to develop great industries and find employment for thousands of his less capable fellows, and yet be denied the chance unless he were master of the arts of the politician; while the ordinary politicians would be attempting the tasks of the great captains of industry, and not have the ability to carry them out.

CHAPTER V.

THE PURSUIT OF HAPPINESS.

Now let us consider the third right claimed in the Declaration of Independence—the right to “The Pursuit of Happiness.”

That right of course involves the rights to Life, to Work and to Liberty: the best classifications will overlap.

But really what the fathers called the
^{45. A general term for many rights.} right to the pursuit of happiness, is a general name for innumerable special rights. Perhaps we can feel our way to a scientific arrangement of them, easier than we can lay it down at the start, as the rights to *political* liberty were laid down in the Constitution. To make a very simple beginning: have you a right to pursue happiness into your neighbor's watermelon patch? Certainly not. You

^{46. Restricted, as all rights are.} must pursue happiness under some restrictions, then, like the restrictions on liberty.

Each man must respect the liberties of others: so he must respect the happiness of others. Every man has a right to pursue his own happiness so far as he does not interfere with another man's pursuit of *his* own happiness. How, then, about competing with a man, and perhaps driving him out of business? Competition exists among several people doing the same thing. To race fairly, each must not interfere with any other's doing the best he can, and government should see that he does not.

Obviously, the very first thing necessary to do in

the pursuit of happiness, is to work for a living, but that being, in civilized countries, a concomitant of the right to life itself, we so treated it.

47. The Right to Work Involves rights of Property and Exchange.

There is another right essential to make the Right to Work of any value—the Right to retain or use up the fruits of one's work; the Right to Work is good for nothing unless a man can be protected in the right to the products of his work; and not merely the right to use them, but also the right to exchange them as one pleases. If a shoemaker could exchange no shoes for bread, he would be in a bad way; or if a man working for wages could not exchange his money for anything else, he would be in even a worse way.

The general name given to a man's right to produce, to keep what he produces, or to dispose of it as he pleases, is the Right of Private Property. Yet that right, like all others, is limited by the rights of others.

47(a). Limited, like all other rights.

Tho a man can exchange his property as he pleases, he has no right to spend his wages in getting drunk, and if other people—his family, for instance, have a right to the money he spends in getting drunk, government should interfere to protect their rights. Even if nobody is dependent on him for anything, a man is seldom so solitary that nobody has any rights in him; and even if one is, government has a right to see that he conducts himself so as not to annoy others, or become a charge upon them. A man owns a thing, then, and has a right to do as he pleases with it, only if he pleases not to injure anybody else, or to do anything that will harm other people more than it will benefit him (24).

48. The Rights to Work, to Property and of Exchange Involve Rights to Contract

Men seldom exchange product alone, and seldom does any one man even start with the raw material and make any product into complete exchangeable shape.

Generally, things are made by a number of men who exchange their labor for money; and in making these exchanges—in making all sorts of bargains, other rights arise to supplement the rights of Property and Exchange.

The first is each man's right that the man he deals with shall stand up to his bargain—generally known as rights under Contract.

^{49. and to Reputation.} Then as each man needs others to deal with him, in order to get them to do so, there is another right almost as essential as rights of Property and rights under Contract—the right to Reputation. A man has a right not to be handicapped by any false reports that will interfere with his Right to Work and to hold or exchange the fruits of his work.

But if he deserves a bad reputation, of course he cannot expect anybody to employ him. Otherwise, government should guard a man's reputation, as part of his Right to Work, and as part of his general Right to the Pursuit of Happiness. Government therefore punishes spreading malicious and injurious untruths. Moreover, a man can sue for damages to reputation. He has as much right to safety in his reputation as in his person and property.

But, similarly with other rights, the right to reputation rests on the duty of deserving a good reputation. If a man sues for damage to reputation, and the truth of the charges is proved, he cannot usually recover any damages. He sometimes may, however, if he proves that there was malice in the charges.

The groups of rights we have just considered, seem to contain all that a man needs in the pursuit of happiness, tho there are a good many others that it would be handy for him to have, such as rights in a good bank balance, and two or three good houses, with stables full of horses, and a yacht, and a few other trifles. But the Signers of the Declaration evidently did not mean that every man has a right to those things.

^{50. State does not furnish means to happiness, but only rights to work for them.} They only meant that every man has a right to "pursue" them, with a fair field and no favor. Nor does anybody mean even "them" to constitute "happiness". They probably do not, as often as the pursuit of them; and certainly not as often as the

pursuit (not to speak of the possession) of the treasures of the mind and heart.

But we will not attempt anything so difficult as a discussion of "happiness", but will treat of its most essential conditions so far as government can protect them, under the heads indicated. Now as to rights in

**51. Evolution of
property rights.**

property: people first got property by appropriating it from Nature—taking a limb from a tree for a club, or picking out a stone well shaped to hammer or chisel with. We can hardly tell why that gave the person doing it, property rights in the thing: we simply know that it is so; or at best, we only know from experience, that its being so, is absolutely essential to human welfare. A man's right to what he has produced or appropriated from Nature, is one of those fundamental principles that the experience of mankind has found out, just as it has found out that two and two make four, or that rights and duties involve each other, or any other bottom fact in nature. It must have been realized very early, and has been better realized every day, that it is for the greatest good of the greatest number to admit such rights, and to develop custom and law to protect them. The conception of property rights is so elementary that if two monkeys are on a tree, and one of them picks a piece of fruit, and the other tries to take it from him, we feel that the property rights of the first are invaded.

The monkey's picking the fruit, involved some labor, and it also involved more or less intelligence: so the first conditions of property rights seem to have been the bounty of Nature, the desire for something, and intelligence enough and labor enough to carry out the desire.

Now when we follow the evolution of property up into man and into modern industry, we find the essentials of its production to be virtually the same three things as with the monkey or the savage; but with the names a little changed: we are now apt to call them

**51 (a) Their
sources—raw ma-
terial, labor,
ability.**

Raw Material, Labor and Ability. The things are changed too. Most mechanics use raw material that has already been produced by other mechanics—a painter's raw material is paint made by somebody else, and a carpenter's raw material is wood from a tree cut down and sawed up by somebody else, and even a blacksmith now seldom makes his own shoes or nails; but the paint and boards and horseshoes and nails are made of things that Nature furnishes directly—from real raw material.

CHAPTER VI.

REAL PROPERTY.

52. Land and sea
the source of
Raw Material.

Original raw material always comes from the land—its forests, farms, and mines, and from the sea. But besides his own labor, and land (which we will understand as including the water and its products), man uses the powers of Nature, such as falling water, wind, heat, electricity, and the muscular strength of animals. Yet these are mainly developed from the land: to use a waterfall or tide power, a man must control the waterside; to use even the wind, he must have a place big enough to prevent others from shutting off his wind; to use heat and electricity, he must control the powers already named, or some product of coal-mines and forests; and to use the strength of animals (including himself) he must feed them with products of the earth, or with animals that were fed with products of the earth.

53. Early Con-
ditions.

Then the land is plainly the first essential of property rights of any kind. Perhaps that has something to do with the name *Real Property*, or *Real Estate*, which is usually applied to it and the things affixed to it, such as fences and buildings.

Among primitive peoples, everybody does as he pleases with the land, but nobody pleases to do much: so nobody exercises any property rights in it—nobody either tills or builds upon it, or even systematically gathers any natural produce from it; nor could everybody do so, even if they knew how, without

quarreling, and the strongest man driving the others off.

That is what has really taken place as our part of the race has developed—the strongest has got possession—exclusive rights over portions of the land have become the property of individuals; at first, by force of arms, but in recent times, by force of ability, which we shall see more of later. But it does not follow that all people having land have forcibly taken it from others who were weak in arms or ability. The early king is often at the head of a people glad to reward his leadership against their enemies, by making him lord of land which he parcels among his followers; and the modern man of ability, while he may control a great deal of land himself, generally enables those whom he guides to control more than they could without him. The savage has no idea of property rights in land. He simply wanders where he can find game and fish. For that matter, savages have not much idea of property rights anyhow; and this is true whether the savages are primitive men or the backward members of modern society. Barbarians, even when evolved up to the grade of the Spartans, have generally thought it admirable to be a skilful thief; and even many ill-balanced members of civilized society wish to take part of the property accumulated by the wise and energetic, and give it to the stupid and lazy.

The first germ of property rights in land, is the conviction that the tribe has a right to the territory it roams over, so that no other tribe has a right to enter it. When the savage gets civilized enough to culti-

54. Communistic ownership. vate the soil, his idea of property rights in it, is still very rudimentary—barbarians simply use their land in common. As civilization advances, they portion it out among themselves for a short period, and then reapportion it. Even to-day backward people, like the Russian serfs and the Indian ryots, hold their land on short leases from the community. But the community still owns all the land, just as it does among barbarians, and reapportions it from time to time.

As people progress farther than the Russians and East Indians, the feudal system is generally the next step, and it is a step toward distinct property rights in land. It is generally a result of conquest. The system was (and is still, for that matter, in some backward places) that the conquering sovereign getting possession of all the land, lets his dukes and great nobles have portions on condition that when called upon, they shall furnish and lead large bodies of soldiers; the great nobles parcel the land out again to petty lords and squires, on the condition that each shall help make up the overlord's quota of the king's army, by furnishing and leading a few soldiers; and these petty chiefs parcel out their pieces of land again to the actual cultivators, on condition that they shall serve as private soldiers.

While nobody but the ruler owned anything under this system, it was an advance on such systems as still linger in Russia and India, because instead of a man being shifted from one piece of land to another, as he is under the system when the community periodically takes it back and redivides it, he stayed on it, and his descendants after him, and got interested in it, and could afford to fertilize and make other improvements far ahead.

The feudal system, then, was a great advance over the ownership by the community which goes with primitive civilization, because a man takes care of what he has some sort of permanent claim on, and neglects what he has not. Farms on short leases are always in a tumble-down condition.

In our own history, the communal system changed into the feudal system among our forefathers in England, with the Saxon settlement, and the division of the conquered lands among each chief's followers. In some of the Saxon kingdoms the system was evolved faster than in others. It can hardly be said to have become universal, however, before Cnut the Dane was able to impose a uniform rule over all England.

*55 (c). Evolution
of hereditary
feudal relations.*

When he conquered England, he divided what land he did not keep himself among his great jarls (earls), but only for their lifetimes. That was the first transition step toward the present system of an ownership forever, subject to only such taxes as the government may impose. At the earl's death, the king was again nominal owner; but as the earl had subdivided among a great number of followers, of course it was to the interest of these followers, as well as of the earl's family, that things should be left undisturbed; and it was also to the king's interest (unless he wanted to put a new favorite in the place), provided the successor would render him the same support in men or produce that his predecessor had rendered. Thus, as it was to the interest of all in possession, that no new favorite should come in and upset things, in time they generally succeeded, by arguments or payments or threats, in inducing the king to invest the dead man's son with his father's rights.

*55 (d). Guardianship,
disposal by
marriage.*

Yet the old principle that the land was the king's and returned to him as soon as the holder died, gave the king opportunities to exact heavy payments before letting widow and children succeed to the holdings of the husband and father. This was the original of our present succession tax. It also led to the king having rights of guardianship over all minors, and of disposal of widows and fatherless maidens in marriage; and he generally got pretty big prices for the rich ones, and pretty large commissions out of all estates. Now the only relic of any such rights is, in England, the Chancery Court; and in America, the Surrogate's Court, or Probate Court or Orphans' Court—the name varying in the different states. All of these courts try to see that nobody imposes on widows and minors, and they all charge very moderate fees—probably less than the cost of keeping up the court, and in some states none at all.

To perfect the system started by Cnut, William the

55 (e). Domesday Book. Conqueror had an itinerant commission called *barones regis* make careful reports of all the lands in England, with the occupants. These reports made the celebrated Domesday Book. He confiscated land right and left, and put all he could under feudal tenure, but it took till the reign of his son Henry to finish up the system.

56. Evolution of private ownership. The first definite step toward an owner-ship more private still, was taken in the twelfth century, when Henry II. (Becket's friend) needed soldiers for war in France. His tenants, like our own

56 (a). Scutage. militia, were not obliged to fight away from home: so to get money to hire soldiers to fight abroad, he took from his knights "scutage" (shield-money) for rent, in place of military service.

56 (b). Leases for labor. But as militarism declined with barbarism, and soldiers were needed less often, those who controlled land began to let it out for other rewards than military service—sometimes even for farm service on the land retained by the landlord himself, to be rendered between times, when the tenant was not cultivating his leased land; and sometimes for part of the produce; and sometimes for money payment. A very ill wind blew most of this good with it: for the Wars of the Roses left the nobles in great need of money, and but little need of military service.

56 (c). Money commutation of labor leases. But tenant-service, and even money-rent, still left nobody permanent owner of the land but the king; and the next advance naturally came about by one big payment for life or for all time, in place of the annual payment; or by increased annual payments for an agreed series of years, on condition that all payment should stop at the end of the time.

57. Land-tenure in America. Now it may be asked what is the use of our going over all this history? Could not our ancestors have started on a private-property basis in America without it? But where could they have got the idea? It had to be evolved.

The full-grown ideas that we take as matters of course to-day, have been the slow work—often the bloody work, of centuries.

Land-tenure started in America by the kings of England, France and Spain, giving much of the land to individuals and companies, and these divided it up among the people of the settled portions. In time, most of the land not so divided up came, in one way and another, into the possession of the United States government.

The government has kept some still, has thrown some open to rights of ownership by settlers on various conditions, sold some to individuals, reserved some for National Parks, given some to the Pacific Railroads and a few other roads, so that they could sell it for money to build the roads; and also given some to the states in aid of agriculture, the states having in turn given it to educational institutions which sell it to get money to pay expenses.

58. Land-tenure similar among all peoples of the same grade. All the systems of use of land which have been described, exist somewhere in the world now—there is plenty of land

now in the condition that all land was in once—desert, or with savages roaming over it—land which virtually no one owns. Then there is land in every one of the conditions of tenure which we have been describing:—among many partly civilized peoples, there is common land and feudal land; among civilized rural communities there is much land let out for a share of the product; and in both rural communities and cities where civilization is at its height, there is land whose rents are always paid in money; and last of all, there is much land, in both city and country, owned by those who occupy it.

59. Private property in land a great stimulus to Ability. Private property in land, whenever and wherever it has become established, has been probably the greatest single step in civilization. With it, appeared the first chance for everybody with talent and energy to get possession of land, and of the social consideration which

that possession brings. Outside of war, politics, and the church, this was the first offering to energy and invention, of the great prizes that have made the difference between the forest-community with no letters or arts, and the community with steam, electricity, books, schools, libraries, galleries, orchestras, and world-wide travel—in a word, modern civilization has grown up with private property in land.

This is saying distinctly that civilization has been the work of a few prize-winners, or at least prize-seekers—the men whom the chance of private property stimulated—that it has been the work of individual men, and not of the race—of a few able men guiding the rest.

Often in barbarous times, the strong man's chance is at the expense of the weak, but seldom in civilized times: a civilized government tries to give *all* men a chance

60. The strong man's chance not at the expense of the weak.
to get all they can and keep all they get. That gives the able man his chance, no matter how poor his start. Rapid new development of corporations (140) in the United States has just now outgrown the government's capacity to control some of their overreachings. But the cases are sporadic, and it may be hoped that government will soon rise to the situation. Ordinarily, under a good government, the strong man does not generally get his sustenance from the weak one. On the contrary, he gets it from Nature, through energy and invention. Widening and securing the range of private property, leads the strong man to work harder and invent more, by making his prizes greater, and increasing his hold on them. And it does even more for the weak man: it not only stimulates him to do his little best, but gives his property a protection that the strong man does not need, because he can take care of his own. Another advantage to the weak man under a constitution that recognizes and secures private property, is that the strong man will be stimulated to reclaim and cultivate so much more land, and to make so many more things, that he will find much more profitable work

for the weak man to do, and provide much more for the weak man's good. That is proved by the wonderful increase in rich men's gifts for the general benefit.

61. Proportion of private owners increases with civilization. It would be expected, then, as is found to be true, that as civilization advances, the proportion of absolute private owners of land increases: in fact there is no more marked evidence of the progress of civilization than that relative increase; and there is no better field for philanthropy or strengthening the state, than increasing the number of people who own at least their homes. Napoleon made it the law in France that the land of a person dying should be divided among all his children. This has produced an immense number of private owners, and they are among the richest and best citizens of their class in the world.* Yet this dividing could be

* For over forty years there has lingered in my memory a quotation from Michelet, in Mill's Political Economy, regarding the effect of private property in land, and, as poetry is stronger than philosophy, it has probably done more to make me realize the merits of the question than all the discussions I have read since. It seems worth translating here.

"If we want to get at the inmost thought, the passion, of the French peasant, it is very easy to do. Let us take a walk some Sunday in the country, and follow him up. See him walking down there before you. It is two o'clock; his wife is at vespers; he is gotten up in his Sunday best; and, I am ready to vouch, is going to see his mistress.

"What mistress? His land.

"I don't say that he will go directly. No, he is free to-day, he can go or not as he pleases. Doesn't he go there often enough every day of the week? Moreover, he turns away, he goes somewhere else, he has business somewhere else. But he will go there all the same.

"It is true that he goes very near: but that just happened so. He looks at it, but apparently he will not go in; what has he to do there? But he *will* go in, all the same.

"Nevertheless, it is probable that he will not do any work; he is gotten up for Sunday; he has on a white blouse and a white shirt—yet all that does not stop him from pulling out an occasional weed, or throwing out that stone. Then there is that stump which annoys him, but he has not his pick with him: so the stump can wait till to-morrow.

"Then he crosses his arms and stands still, looks around earnestly, carefully. He looks long, very long, and seems to

carried to a point where the heir's farm would not be big enough to support him or pay for using expensive machinery; but then he can sell out and go to manufacturing or shopkeeping. The difficulty would cure itself.

Our own country shares with France the leadership of the world in wide dissemination of the ownership of land, and the fact is of very great importance to us:

62. Landowners the best guardians of government, the large numbers of people owning their own farms and their own homes in America, probably do more in the desperate fight to keep the government prudent and patriotic, than all other influences put together. Any man owning land *must* pay taxes—he cannot hide his land from the tax-gatherer: therefore he must have a stake in honest and economical government. We shall see much more of this very important consideration.

63. and the most thrifty citizens. The French peasants make better incomes than other small farmers, who lease their land, just as our farmers who own their land, generally make better incomes than those who lease it: a man cares for that which belongs to him in a way that he cares for nothing else, and enjoys caring for it to a degree that keeps him cheerful and capable; the more cheerful and energetic he is, the more he produces; and the more that a man produces, the better not only for him, but for the whole community, because the cheaper it can be sold to those who do not produce it.

64. Exaggerated claims from the foregoing advantages.

Some people have pushed reasoning from these advantages, to at least two very absurd extremes.

forget himself. At last, if he thinks anybody is looking, if he sees anybody coming, he moves off with reluctant steps. Yet at thirty paces, he stops, turns again, and casts over his land a last look, a look deep and somber, but to one who knows how to see, the man is thrilled, his look is from the heart, charged with devotion."—*Le Peuple*, par J. Michelet, I^e partie, ch. I.

As the first, they say that as every person born has a right to exist on the earth, and therefore a right to a place of existence—to a home: every person is entitled to own a piece of land.

It is hard to see how that right can be good against anybody but his parents. Nobody else ordered him here, and certainly a man with a little or no land, cannot have a right to bring into the world as many children as he pleases, and require other people to give them a part of their land. The only condition upon which a man can claim a right

*64 (a). The right
to a home.*

to land or to anything else, is, of course, by performing the duties which correspond to the right (23, 25), either by appropriating what nobody else had a right to (51), or exchanging for what he wants, something he had appropriated or produced.

And even suppose it possible to give every man a piece of land, how long would most of them keep it? Apparently until they could sell it or give it away—one cannot always do either. It is now very hard to keep people on the land, they are flocking more and more to the cities, even if they have to live in tenement-houses. In 1905 one third of the half million Italian immigrants were in the slums of New York, while the agricultural industries of the South, in a climate and labor congenial to the immigrants, were crying for them in vain.

Yet the Salvation Army's farm colonies, for instance, are excellent as far as they go. But so far, they have got only a trifling portion of the three million people they say they ought to have. With more money they would get more, but not enough to reverse the rule.

Yet in spite of all the facts, there is a great outcry against holders of idle land, for keeping the starving millions away from it; but there is always a great outcry against holders of anything by those who do not hold anything, and all the time this idle land is paying taxes which would not be paid if government owned it.

The second reason given for the claim that every

man has the right to own a piece of land, is that every man has a right to a living, and that as everything that sustains life comes, in the first instance, from the land, every man has a right to enough of the land to make his living out of. There are two answers: no healthy man has a right to a living unless he earns it, or gets it honestly from somebody who did earn it; and there are endless ways of earning it without owning land. as already stated, many people cannot be forced to make their living out of the land. Moreover, not every prosperous man gets his living directly out of the land, even many very rich people do not *own* any land; and in fact, not one American in ten *owns* any land whatever. So it does not seem necessary that, to have a home and make a living, a man must own land.

As a fact, any energetic poor man, under ordinary circumstances, can get a farm to work if he wants it. The older parts of the country, New England and the South, abound in empty farms begging for tenants to work them on shares; and the new Western wild land needs them as much; there is plenty of open land and sunlight and fresh air within easy reach of the people who are packed in the city tenement-houses, but they will not go to it.

But to work land, men require capital—money, horses and farm machinery, and it may be urged that it is because of lack of them that they will not go to the land. But the fact is that the men who have farms and capital to work them, are suffering because they cannot hire labor; and all the while people are working in other pursuits, at worse wages, and penned up in city tenements. In answer to this, it is urged that as the laborer going to work on another man's land, would not make him its owner, the laborer's not going for hire does not prove that he would not go if the land were his own. But those who own land are leaving it more and more. If anybody else wants any, he can prove his right to it, as he can to anything else, by earning it.

64 (b). *The right to a living.*

~~65. Land valueless
to all but able
men.~~

So far as observed, those who object to private ownership of land, have not generally shown any particular inclination to work the land or improve it, or any ability to do it if they try. The objection is most generally made by men who have not had much success in any other pursuit, and that is a poor show for success in farming: it certainly requires as much ability as any other ordinary pursuit. People are constantly taking up land who cannot support themselves on it, and who end by working for the people with the ability to show them how.

On the whole, then, it does not seem to make much difference whether everyone is entitled to a portion of the earth or not, as long as those who are able to do anything with it, are generally able to get it; and those who are not able to get it, would not generally be able to do anything with it if they had it.

~~66. Proposed
reversion to gov-
ernment ownership.~~

So much for the exaggerations of the advantages of private ownership. Now as a fact, those guilty of these exaggerations are generally about as consistent as people given to exaggeration usually are. Those who in one breath thus magnify the benefits of private ownership of land, in the next breath generally propose to do away with private ownership altogether—they generally propose that government shall take all the land, and that everybody who uses any, shall pay rent to government, instead of, as now, owning the land without rent, or paying rent to a private party. And all that, in face of the plain fact that if government did take all the land and pay for it and rent it to the people, it could make no difference to people now paying rent, unless they should pay less rent, and then it would be simply a scheme for government making a present of the difference, to anybody who wanted land, at the expense of those who did not.

This speculation was once proposed by John Stuart Mill to the English government. If they had gone into it, instead of people in general being gainers, as

expected, the landlords would have been the gainers at the expense of the rest of the community: at a fair price, the lands of England would have cost the government more than they were worth fifty years later: so far have our wheat and cattle, and those of Australia, taken the place of England's productions.

But government's taking all the land by robbery, as is quite widely proposed by those who have none to lose, and renting it to the people, would help the taxpayers more than it would the poor: for the state would receive all that rent-money, and need less for taxes. But the landlords pay most of the taxes now:

67. Landowners support the government under either system. in New York and Massachusetts, for instance, four fifths of those collected directly. And most of the other fifth—the taxes on personal property, are undoubtedly also paid by the persons owning the land.

Then after all, the scheme would be as broad as long: for government ownership would not put the land in new hands. If anybody wants land and has the money to pay for it, he gets it now. What difference would it make if he got it from government?

Last of all, the state is not apt to make a good landlord: for it already has more to do than it does well or honestly.

68. Some advocates of robbery, which would disappoint them.

So far as we have gone, then, there does not seem to be any rhyme or reason in the scheme of government ownership: so there is probably some "true inwardness" that we have not yet attained to. That inwardness is that all these foolish notions that we have been considering, are given as reasons why government should take all the land *without* paying for it—take it either directly or by taxing all the value out of it, and rent it to those wanting it, and devote the proceeds, above the present amount of taxation, to public works and the benefit of the poor. That certainly would at least be helping the poor at the expense of the rich; but not as exclusively as its advocates intend: for many of

the rich have little or no land—many owners of large tracts are land-poor with their holdings mortgaged for more than they are worth, and many of the poor, if they were to receive land as a gift, would not keep it.

Yet certainly the scheme would help some of the poor at the expense of some of the rich, but it would help more of the rich at the expense of *all* of the poor: for any attempt to carry out the scheme would make, for a time, the greatest financial upset ever seen, and there never yet was a financial upset in which the rich did not generally hold on to what they had, and buy cheaply what the poor had to part with at forced sale.

69. The only way to help the poor is to help them help themselves. Government ownership of land, then, is one of half a dozen schemes to help the poor without their helping themselves, which are all equally unsound, and which we will see more of as we go on. This world was plainly made for the people who help themselves, and there has been no way discovered for anybody else to get much good out of it. Yet helping oneself is not the only way to get good: more still can be had from helping one's neighbor, but a man cannot do that before he takes reasonable care of himself.

We will more fully consider the questions of the care of the poor, when we come to treat of government's promotion of convenience. For the present we are busy with its protection of rights. Now outside of alleged "public policy", which embraces the points we have considered already, there is twofold moral justification alleged for protecting the rights of the community by robbing present holders of their land—first, that the land originally belonged to everybody, and was wrongfully seized by those from whom its present owners got it, and therefore should go back to everybody; second, the famous "unearned increment" argument.

70. The moral arguments—original general ownership. As to the spoliation argument, there is no evidence for it, except in such cases as when Europeans dealt with Americans

and Africans. If most of the land in Europe and Asia was stolen by the original grantors of its present owners, it was "stolen from a thief": for it had been conquered and reconquered over and over again. The rights of the present owners are vastly clearer than any other rights that could be presented: no descendants of previous proprietors who might want to stand in the shoes of the present ones, could prove any rights at all: if they could, courts are generally open to them.

But where civilized people have robbed barbarians—the case of our ancestors in America, if you please—that case might be a reason why the present owners (including the heirs of Henry George, if he owned any land) should give the land back to any heirs of the savages they can find; but it cannot possibly be a reason why the owners who are not heirs or followers of Henry George, should give it to those who are. The barbarians had not much idea of any such rights themselves: those rights take shape only as a civilized community grows up on the land. But *some* people we call barbarous do use their land, and some land has been taken from barbarians of that kind. Yet there are very few such cases, and in most of them it is too late to find anybody representing the barbarian owner; and even if it were not, it is too late to do justice to the former interests without doing more injustice to interests now vested. Many a piece of land which was never worth a dollar to the barbarian, is worth millions to present innocent holders.

As a matter of abstract justice, you might give the barbarian the dollar if you could find him, but that is not what Henry George's followers are after. Yet of course in theory, where civilized people have got possession by force, and not, as Penn did, by bargain, justice should be done if it were possible. Some deny that Penn's buying a great state for a few beads was a fair bargain. But that was more than it was worth to the savages. The fact that civilized men have made it worth more, is not one that the savages are entitled to any benefit from.

In a similar case, those who sold the site of the city of Chicago little more than a lifetime ago, for a mere song, are not entitled to any benefit from what later owners have done with it: for what the latter men have made, is their own.

71. Attempt to
remedy injustice
sometimes only
increases it.

Even if the site had been obtained by fraud, it ought not to be given back to the original owner if he can be found: for such a doctrine would stop all enterprise—nobody could build or cultivate with guarantee that some far-back landowner or his heirs would not come along and claim the land and, of course, all on it.

Yet nobody can get a good title to land or anything else through fraud, nor can anybody convey any better title than he has himself; and a title obtained through fraud fifty or a hundred years ago, and passed from hand to hand since, cannot be anything but a fraudulent title.

72. Performing
duties of ownership
breeds rights of
ownership.

But on the other hand, receiving an old title, good or bad, is not the only way to get a good title. Using the land, or doing other duties incident to ownership, will answer the purpose. The law provides that anybody who performs duties of ownership for a reasonable time (varying in different states—usually twenty years) during which nobody else has performed any, has a perpetual right to the land; and has that right, even if the land clearly belonged to somebody else at the beginning of the twenty years.

Such a law is justified by at least three good reasons: first, no one has a right to neglect his property so far as neither to use it himself, nor assert ownership while another is using it; second, if an owner will not use land, it is an advantage to the community to have somebody else use it; third, if a man honestly comes into a title that was originally fraudulent, and the rightful owner does not assert his claim within a reasonable time, the honest occupier should not be disturbed in the enjoyment of whatever improvements he may have made for his own benefit and that of the community.

73. Rights in Improvements.

Attempts have been made to settle the matter by letting a claimant after twenty years of another's adverse occupancy, pay for the improvements. But that was found to discourage improvement, because the motive to improve is not merely to get back cost, but to develop a profit.

There were two justifications cited for the proposed robbery of present owners of land. The "original robbery" one being disposed of, we come now to the "unearned increment" one. Wherever population grows,

74. The unearned increment. land increases in value. If a man owns a lot worth a thousand dollars in a village of, say, a thousand people, if that village grows to contain two thousand, the value of the land is apt to be increased by the coming of the second thousand, and it is claimed that the community is entitled to the increased value, because the increment of value is "unearned" by the owner of the lot.

This good reasoning does not cover the case. The second thousand people do not do anything to a former resident's lot, and certainly the first thousand did not: so how can either have any claim on its increased value? The owner is the only person who does anything to it, even if he only pays the taxes on it. If he starts on it an industry which increases the population, he does something to increase the value of every piece of property in town, and he, if anybody, is entitled to the "unearned increment". But the unearned-increment advocates claim that it should be given to those who have *not* built anything—to the poor. As a matter of fact,

74 (a). Not characteristic of land alone.

increase of population must bring all the unearned increment to the business of a newspaper or a store or a blacksmith shop, that it does to land, and more: for all the increment that land can get, it must get from increased rent paid by business of some sort, even if that business be farming. (Scientifically speaking, all benefits coming from the use of land are "rent", even if the owner gets them.)

Every man who does his work well—every capable

and honest man who does something to improve the lives of people, raises the value of land near him; but that gives him no right to any but an incidental share in the benefit he confers on his neighbors—except that it does make it fair that his neighbors should reciprocate by being capable and honest too, and so conferring benefits on him.

The community has no more right, then, to partly take possession of land by taxing away the unearned increment, than by doing the same to the unearned increment of the blacksmith's business or the newspaperman's or the butcher's or baker's or candlestick-maker's.

Under the present system, people invest in unoccupied lands on the chances of the unearned increment, and pay taxes and lie out of interest. If government took possession, it would have all the unimproved land on its hands, with nobody to pay taxes on it. Of all the wild follies written in advocacy of government ownership, the wildest is the assumption pervading most of that writing, that if government owned the land which nobody cares to use now, such land would all come into use, and all the poor be made rich by it.

And after all the fuss, it is very uncertain how much unearned increment there is to tax. That is largely a question of time and place. Henry George claimed that paying the rent on unearned increment, directly and indirectly, is the cause of virtually all poverty; and yet Superintendent Harris, in the *Educational Review* for May, 1905, says: "Careful investigation has shown that [rent of] land in the United States is a small burden: only one eighteenth of the . . . earnings of the people in 1880—two and one-fifth cents per day as against average production of more than forty cents a day for each inhabitant." I know of no later calculation. Tho one could be made without much difficulty, it would be superfluous. Professor Mayo-Smith says: "From the experience of England . . . it may well be questioned whether the present ground-rents of agricultural land represent more than a fair return for improvements

made. So too, in regard to the unearned increment, it appears that there are numerous losses as well as gains, so that it is doubtful whether, on the average, and in the long run, land property is any more advantageous in form than any other kind of property."

The whole consideration seems to show that the idea of everybody being entitled to a piece of land, or of government appropriating it for the general good,

^{75. All schemes to abolish private ownership are retrogressive.} is simply a proposition to return to the half-civilized communal system—to go back to where India and Russia are, and wipe out all the stimulus to careful and energetic and forethoughtful management, that rests in private ownership.

Aside from the impossibility that a man should do much for a farm that he holds for a short time, the communal landholding of backward nations helps keep them backward, because habit and the chance to get land for nothing incline such people to keep on working the land: therefore fewer people are led to manufacturing, commerce, and the other pursuits which perhaps do even more than the primitive and sequestered one of farming, to advance civilization.

At first it seems a paradox that while in America it is hard to get people to take up the abandoned farms, in Russia it is hard to get people away from the communal land. The explanation is that the Russian and his ancestors have been so long under the deadening influence of communal land that he cannot rise above it; but the American has always been planning ahead for *his own* land, so the habit of thinking a long way ahead and outside of his daily round has been formed in him by the private ownership of land.

^{76. Private property in land of universal importance.} The management of land is not simply the owner's lookout, or that of the holder for the time being. If he does not manage well, he is not the only one to suffer. Everybody depends on the land, whether he owns any or not, for his

food and clothing and everything he uses, except what comes from the sea. So it is to everybody's interest that the land should be managed in the most careful and productive way; and the first essential to careful and productive management of land or anything else, is that a man should be sure of reaping where he sows—of getting the results of what he plans—that he should own the thing he works upon. While very few people own the things they work upon—even the farms, not to speak of the factories and shops, it is not unreasonable to look forward to the time when most men will. It is true that while hundreds of men work on a single railroad or in a single factory, or even on a single farm, they cannot each own it, but things are rapidly shaping themselves so that each can own a share in it, if he is economical enough and wise enough to do any owning at all (126).

77. Rights in land
limited like all
rights.

It ought to be plain by this time that it is as much the state's duty to protect rights to land, as rights to life or liberty. But we saw that it sometimes becomes the state's duty to limit the citizen's rights to life or liberty, and we could expect to find the same true in regard to his rights to land.

Whenever the greatest good of the greatest number requires it, the state should take the citizen's land, and despite the theories we have been considering, experience seems to prove that a case where the state should take it without paying for it is not apt to arise. At least the fathers of our government were so well satisfied that it never can (in this being less wise than the Henry Georgians think themselves), that as early as 1791, it was provided in the Constitution that land taken by the National Government for public uses must always be paid for.*

The two principal sets of circumstances under which land is so taken, are when the right to take it at a

* Amendment V.

78. Rights of Eminent Domain. fair valuation is given to citizens working for the public accommodation—to railroad companies and water companies, for instance; and when the state itself obliges holders to sell their land for the use of legislatures, courts, custom-houses, post-offices, police-stations, forts, barracks, dockyards, roads, railroads (where the state builds them), and many other purposes.

The greatest good of the greatest number requires that a railroad should take a direct way, instead of being obliged to zigzag only where people are willing to let it go; and so the state may rightly enable a railroad to cut a man's farm in two, or perhaps tear down his very home; but it must compensate him. The government usually decides through some form of legislation, when the greatest good of the greatest number requires a proposed railroad; and if the justice of the law is disputed, it must also be passed upon by the courts. Besides deciding that the road would be for the greatest good of the greatest number, the state must also give the authority to lay out the road, and compel people to sell the right of way at reasonable prices. Where the parties cannot agree on values, the courts appoint commissioners to fix them.

The right of the state to take land or authorize citizens to take it, is called the right of Eminent Domain.

One other condition places the citizen's rights in land at the disposal of the government: land can be taxed of course, like everything else, and sold if the taxes are not paid.

CHAPTER VII.

LAW OF REAL PROPERTY.

Now we have some notion of the rights of property, especially as concerns the land. Next let us consider the rules under which rights are protected and transferred. Those rules are called the Law.

79. *The Law in general.* No man ever had a thorough knowledge of the law. It is the most colossal product of the human mind. Yet many men have thoroughly known its outlines and some of its parts. To have a good working knowledge, one must know some dozens of big volumes well, and also know how to consult some thousands. It need hardly be said that we can get but very slight notions of it here, but those slight ones may be well worth while.

Every citizen should have some appreciation of where this immense mass of wisdom and justice comes from, and an adequate appreciation of it stirs the admiration, the reverence and even the affection of every liberal mind. The law has been evolved slowly from many sources. The four principal ones have been, first, Constitutions—agreements made by peoples as to what sort of executives, legislators and judges they shall have, and what powers those functionaries shall have; second, Statutes, rules made by legislative bodies—from primitive tribal assemblies down to modern parliaments, congresses, and state legislatures (perhaps in these we should even include the law-making bodies of local governments); third, the Administrative Law—the decisions and practices of the executive or administration in the

course of its business—such as the rules of the treasury, the custom-house, the post-office and the other departments: many of these have been confirmed by courts or legislatures or custom, and so become permanent parts of the national policy; and fourth, the Common Law—the decisions made by judges (the judges in primitive times having generally been priests). These decisions have been handed down, first by tradition, and in modern times by a very thorough system of printed reports, with elaborate summaries (called digests) and indexes. These volumes of reports now contain the main bulk of the law. They are consulted in all important trials, and arguments and decisions are based on the points of the case in hand which have been decided in previous similar cases. Moreover, the growing wisdom of the ages has been shaped into a number of maxims that have great authority in the law, some of which we shall see hereafter (85, 182, 186, 191, 205, 214, 214 f, 385). Many of them are in Latin, dating back to the time when our legal proceedings were generally conducted in Latin—some of them even back to Rome. From judges' decisions and maxims, and occasionally from statutes, learned writers have made many compendiums showing which way the weight of opinion has gone in various classes of cases. These constitute what are called the "text-books", on such subjects, for example, as Real Property, Contracts, Evidence, Corporations, and hosts of others.

As Constitutions prescribe what the officers shall be, and their powers, all other bodies of law are made by those whom the people elect to make them. All other powers are reserved to the people. If officers want more powers than the constitution gives them, the constitution must be amended or a new one made. Constitutions, with their amendments, are voted on by the people. Countries like Russia or Turkey, without constitutions, are governed by those who seize the power or inherit it.

In England, Parliament has power to change the constitution, but the people have power at any time

to change parliament, not needing to wait for the regular time, as we do.

As the administration is under the control of the constitution, and to some extent under the control of the legislature and even of the courts, administrative law is constantly merging into constitutional law, statute law and the common law.

While the president, or any one of his cabinet, or any officer acting under any of them, must to some extent make his own decisions and shape his own policy, he must do it within the lines laid down by the constitution and the laws; and anybody thinking himself aggrieved by any public officer, generally has some sort of right of appeal to the courts. Similarly, judges under the common law must decide in accordance with the statutes and the constitution; and framers of statute law, while they can override common law (subject to the danger of having its weight finally lead to neglect or repeal of the statute), cannot override constitutional law: if they do, the courts will declare the statute null.

The order, then, of the four bodies of law, in respect of their control, each but the last controlling what is under it, is Constitutional Law, Statute Law, Common Law, and Administrative Law. Constitutions control legislatures, judiciaries and executives; legislatures control judiciaries and executives; judiciaries control executives. When executives attempt to control any of the other powers, as they are often, especially lately, accused of doing, they incur disapprobation, and risk impeachment and deposition. Similarly with judges (unless they have constitutions at their backs) when they place themselves in opposition to legislatures, or, of course, when they attempt *undue* control of executives.

the things fixed to it, is Real Property, or Real Estate, or, for short, Realty. Movable property is called Personal Property. One reason for calling land and the things fixed to it, Real Property, was probably because it is the source of all other property, and it looks as if another reason was because land is less apt than other property to slip out of sight.

But the rights in real property are not actually more "real" than the rights in personal property. The name deceives most people. Real estate usually fluctuates more in value than personal property, and is probably oftener hard to find a buyer for.

81. Laws protecting ownership. First, then, as to *protecting the enjoyment of property rights in real estate*: anybody may properly enter one's house or grounds for any reasonable purpose, for instance, to make a visit or a short cut on foot or with a team, unless the owner objects. But if he does object, unless the person were doing some real harm, the juries would probably give less damages than a lawyer would cost.

81 (b). Right of ejection. If one has posted up a notice forbidding persons to enter, greater damages would probably be given. If the owner orders a person off, and he refuses to go, the owner can use force, but not enough to do serious injury. If he cannot get rid of a trespasser without doing serious injury, he may have to get an order from a court prohibiting him from staying or coming; and if he violates that, he will be shut up for contempt of court. An officer of the law can use all the force necessary to take his man, even if it kills him; but he must be careful not to use more than necessary. If an officer cannot get a trespasser off, he has a right to call upon everybody to help him. If in the course of the argument, the stubborn gentleman seems likely to injure somebody else, everybody has the right of self-defence, up to any point.

If a man squats on land and builds a shanty there, the owner can remove him and his shanty, if it is

possible to do so without violence. If it is not, the owner must appeal to a court to order him off.

If during an owner's absence, somebody has built upon and improved land, claiming it as his—even under a mistake, the owner may go to court for an order of ejectment, which will be granted unless the occupant shows a good case.

82. Laws affecting transfers. Now as to *transferring* property rights in land. Rights in personal property are generally recognized by possession—the property usually (we will deal with some exceptions later) being near the person of its owner, and transferred by delivery.

But one cannot deliver a piece of land, and it cannot always be near enough the person of the owner to be recognized as his, unless it happens to be his home estate or the location of his business. Hence in old times, ownership in real estate was transferred and recognized by the man who made the grant, and his grantee, walking around the property together, generally with witnesses, and then the grantor delivering to the grantee a token of possession, such as a piece of the soil or a twig from one of the trees.

In your reading, you may often come across a technical phrase for this ceremony, which was called "*livery of seisin*." Livery is plainly connected with delivery, and seisin is connected with the fact that in early times (and even now in law phrase) the owner was said to be "*seised*" of the property—a suggestion that in rude times "*seisin*" was not always connected with "*livery*." But livery of seisin is not the usual method, even in our gentler age, tho it does survive in some remote and primitive regions, even where the present method has grown up beside it.

82 (b). Statute of Frauds requiring written evidence of transfer.

The present method is by the transfer of a written "*deed*", of which a copy is usually registered at the chief town of the county. Certain statutes to guard against frauds (the principal one of which, generally known as the "*Statute of Frauds*", was passed in the reign of Charles II.) provide that contracts relating to real estate,

and certain other things which we will consider later (198), must be in writing, tho now in many states, statute permits a verbal lease for a year, and sometimes longer. Usually, now, when two parties have agreed on a sale of real estate, they at once put their agreement in writing—generally by filling out and signing a printed form that the lawyers' experience has led the stationers to prepare, and the purchaser generally pays something on account, which will be forfeited if he does not carry out the contract.

You may wonder what we have to do with a law passed in England under Charles II. We were generally governed by the English laws until the Revolution; and when we dissolved our connection with Great Britain, each state enacted that the previous laws of England should prevail within its borders, when not in conflict with laws made by its own authorities. All later states have so enacted, but Louisiana, which is still under much of the law she received from France.

To return: part-payment is often supposed necessary to make a written contract valid, but it is not: for, as we saw, under the Statute of Frauds writing alone makes the contract valid, if it is valid in other respects which we will consider later.

82 (c). Contracts of Sale. The written contract of sale usually recites that in consideration * of blank dollars paid to A by B, A agrees to sell, and B agrees to buy, a piece of land described; that the price shall be blank dollars, so much payable on the signing of this contract, so much on the delivery of the deed at some specified time and place, and (if there are any deferred payments) so much at other times specified, the deferred payments to be secured by a mortgage (83).

82 (d). Deeds. A deed is any instrument sealed as well as signed. This does not mean sealed up: in old times before men generally—especially the great fighting characters who owned most of the property,

* There may be other considerations, and it might be worth the reader's while to anticipate the order of statement by reading regarding them in Section 179 ff.

knew how to write their names, it was the custom to authenticate written instruments by putting on a seal after words declaring that the instrument was the parties' free act and deed; and even after it became general to sign the name, on specially formal instruments it remained customary to put the seal also, and the name "deed" was retained for all instruments under seal, tho in popular use it generally means a conveyance of land.

82 (e). Seal and its effect. Generally the seal need not be an impression of some device peculiar to the grantor, and on some impressible substance: in most of the states, any spot of some adhesive substance will do; and in many of the states a mere scrawl of the pen, with the word "seal" written in it, is enough; or perhaps even without that word, if the position and nature of the scrawl make its purpose plain.

An instrument under seal has distinctions other than in name, from one not under seal. Where an instrument is under seal, the court takes it for granted that the price or other consideration (179-181) was fair—the grantee need not prove that it was, and the grantor is not permitted to disprove it, unless mistake or fraud is alleged.

Moreover, a person can claim damages under a contract under seal, till some time fixed by statute—in most states twenty years, has elapsed, while under other contracts, six years is the usual limit. (See also 82 m, 190.)

Not all deeds convey an interest in land: instruments for other purposes are often put under seal.

82 (f). Essentials of deeds. The laws regarding deeds vary in different states, but usually the points essential in a deed of real estate are that it name the grantor and the grantee, preferably with the town, village or city of the residence of each, clearly describe the property, name the consideration for the transfer, clearly state that the land is transferred to the grantee to be held by him, and it often has been decided by the courts that unless property is conveyed to the grantee *and his*

heirs, only a life-estate is conveyed. Moreover, a deed, in order to be recorded (which, as we shall see hereafter, is important) must be witnessed by a notary—that is, must contain a notary's certificate that the signature was acknowledged before him; and if it is not to be recorded in the county where the notary acts, his signature must be attested by a certificate from the clerk of the county.

82 (g). Dower and Courtesy. One other point is necessary if the grantor is married. In many of the states, if a married male grantor dies, his widow would have an interest for her life (called her dower), in one third of the property, unless she has relinquished it in the deed; tho in a few states, this interest cannot exist in any realty but the homestead, and such other realty as the husband may die possessed of. The latter policy seems the better, as the necessity of having the wife join in every deed given by her husband, is seldom of any real value to her, and often involves much trouble and delay, when she is ill or away from home, and the custom is also in restraint of trade.

On the other hand, in some of the states, the old law still exists that if the grantor is a married woman and should die, and if she had had a child by her surviving husband, unless he had joined in the deed he would be entitled to the use of the property for life—called the courtesy of it.

82 (h). Value of established forms. While the steps already recited are the only ones *necessary* to a deed, others are desirable. Questions regarding deeds have been coming before the courts for hundreds of years, and lawyers have been shaping the expression of deeds so as to prevent such questions arising after the transaction: so it is very well to follow forms that experience has approved. Yet there have been many embarrassments regarding this: the lawyers have gradually loaded up forms of deeds with so many provisions and so many legal phrases, that common patience could not read them, or mere common sense understand them. This experience is by no means restricted to

deeds. The whole business world knows it. Business men who habitually make written contracts for any specific purpose, and often print them, find that new features keep arising in the course of experience, which they try to provide for in subsequent contracts. The number of these provisions often so swells the printed forms, that a fresh start with simple ones is found desirable, even at the risk of leaving some contingencies to be settled when they arise.

To remedy this unwieldy growth of legal forms, the most progressive states have provided by legislative statute, brief and simple forms for both deeds and mortgages.

But their use is probably not imperative anywhere, but only recommended and given the full sanction of the law; yet timid people who want to provide in advance for everything that never happens, can make their instruments as labored as they please.

82 (1). Registry. *Title-search.* Real-estate sales are usually completed some weeks after the contract is made, because delivery and possession cannot be as simple as with personal property, and it takes time to arrange for them. If a man has a piece of personal property in his possession, and delivers it to you for a consideration, the law will not go back of that delivery for any reason except the property's being stolen. But a small portion of the world's real estate is in plain possession of anybody—a man driving with you in the country, or even standing with you in a portion of the city, could easily say: "This property is mine," and sell it to you, when it was really somebody's else, or mortgaged to somebody, or burdened with some other rights of somebody. Consequently, in early times, as writing became general, records were made of the ownership of property. They began, in our race, with William the Conqueror's Domesday Book. As our country was settled, each commonwealth parceled out the land among the people, and gave them deeds, which were put on record (or registered—the terms are used interchangeably), usually in the county where the land is situated. Each

transfer since has been recorded. When any important contract affecting land is made, the grantee, if he has ordinary sense, has the records searched to find if the title is good—that is, if his grantor has a good deed from a chain of persons who had good deeds back to the first grant by the state. He or his lawyer also looks into the record of mortgages, taxes, and other serious burdens on property, to see if the property in question is free from them, and writes to the clerks of all the courts in the county, to see if they have any unsatisfied judgments.

82 (j). Judgments. A judgment in this sense is a decree of a court, usually against a loser in a suit, which is put on record, and which makes the property of the person against whom it is issued, liable for the sum decreed by the court.

82 (k). Statutes of Limitations. Prescriptions. Appurtenances. The principal Statute of Limitations was passed in the reign of Charles I., and the effect of it on real estate, in nearly all cases, unless modified by later statute, is to prevent any claim taking effect unless it is urged within twenty years of any adverse holder taking possession. After anybody has held land unopposed for twenty years, the law presumes that he had a grant of which evidence has been lost. So if the title is found clear for twenty years, it is often considered a good risk (72).

When a right has been used without dispute for the time required by the statutes of limitations in the state where the land is situated, it becomes a right by prescription. Then the right becomes legal, even if it covers the ownership of the property. Such rights, however, are often for privileges less than those of ownership, and are then called appurtenances (92). They sometimes may so encumber land—for instance, by preventing building in certain spots, as to be serious clouds on title.

82 (l). Title Insurance. You can insure against a bad title, just as you can against a fire, but the company generally first hunts up the title, for its own sake, tho the older companies have searched titles of so

many pieces of land that they often have to search only back to the time of some recent search, besides, of course, making inquiries regarding judgments (82 j) to the clerks of the courts.

Unless the title is insured, so many questions are apt to come up, that usually a good lawyer is needed to make the search, and if there is a cloud on the title, *82 m. Clouds on title.* either the trade is called off, and the earnest-money returned, with interest, or the parties agree to keep the trade open for some fixed time, in the hope of paying off incumbrances or otherwise clearing the title.

This second agreement, for delay, should be in writing, tho, there being one written agreement already, the courts would probably wink at a reasonable delay in making another, as some time would be needed to settle its conditions.

As the adjournment of passing the title is probably for the mutual convenience, the mutuality would generally be deemed a consideration, tho the general view is that the original consideration holds over for the adjournment.

If the title is found all clear of outside claims, on the appointed day, the grantor gives the grantee a deed.

If the deed is delivered subject to conditions not expressed in it, such as the performance of some act by the grantee before the deed can take effect, the conditions are ineffective. All the provisions of an instrument *under seal* take effect upon delivery. Tho one not under seal can be effectively delivered subject to any lawful conditions, such as to take effect on a certain day if certain prices rule, or even if the weather is fit for certain operations. The only way to make limiting conditions effective in an instrument under seal, is to put them in the instrument itself, or to leave it with a third party, to be delivered only when the conditions are fulfilled. This is called putting it "in escrow"—reducing it to the condition, for the time being, of a mere "scroll" or memorandum.

82 (n). Delivery of deed. If the grantor dies before the deed is given to the grantee or to somebody else for him, the deed takes no effect, but the proposed grantee can call upon the heirs to give him a new deed, and if he does not get it, he has a good claim on the estate for any money that he may have paid in advance.

83. Mortgages. A mortgage is a right to sell a piece of property, real or personal, if the owner of it (the mortgagor) does not, by a certain time, pay a debt due the person holding the right (the mortgagee).

Originally all of the proceeds of such a sale belonged to the mortgagee, but now the excess, if any, above the loan with interest and expenses, belongs to the mortgagor.

The form of a mortgage does not usually differ from that of a deed, until near the end. Originally a mortgage was made by simply handing over a deed, with an agreement that the land could be redeemed on paying the borrowed money; and even now the mortgage conveys the property just like a deed, and then provides that the mortgagor can have the property back if he pays the debt named in a certain bond (or perhaps only promissory note) which accompanies the mortgage.

83 (a). Bonds. The difference between a bond and a promissory note is that a bond is under seal (*82 d*) and may hold its maker to the performance of some other act than the payment of money, tho it always provides for the payment of some value in case of non-performance. A promissory note, on the other hand, is not under seal, and never promises anything but the payment of money at a specified time.

The right to redeem the property under mortgage is called the equity of redemption

Before accepting a mortgage, it is worth while to be sure of a good title, just as before taking a deed: if there are any previous mortgages or judgments, they have to be satisfied before the new mortgage takes effect, and the mortgagee should see that all taxes levied previous to the mortgage, and during its life,

are paid by the mortgagor: for they must be paid before the mortgage can be paid.

34. Leases. A lease is a right to use real estate for a given or ascertainable time, generally conditioned on the payment of rent.

The same precautions of form and search accompany a lease, as a deed or mortgage, except as the interest is smaller.

A deed or mortgage or lease being made out in proper form, signed, sealed and delivered, the transaction is closed as between the parties, but not as between **35. Rights of third parties regarding registry.** them and outsiders. As regards those

without other notice, a piece of land belongs to the person in whose name it is registered, and if A, after giving a deed of it to B, were to sell or mortgage it to C, and C, without knowledge of the existence of B's deed, were to get his instrument recorded before B, it would be good against B's earlier instrument not recorded; but record is notice to everybody. The time of record is drawn so finely that on any recorded instrument, the county register always endorses the minute of the hour of the day he receives it, and it is considered as recorded that minute.

If C gets on record first, giving him the property would not ordinarily be unfair to B who had paid his money first, because if B, by neglecting to record his instrument, had left room for C to suppose that A was still the owner, it would be B's fault that C had parted with his money to A; and so if either B or C is to suffer, plainly it should be B. There is a general maxim of the law (79) governing such cases, to the effect that: "The law helps those who are wide awake, not those who are dozing" *—in this case, it helps the man who gets on record first, not the one who goes to sleep over his deed.

Yet creditors could not seize the property of A if they had given him credit supposing the land was his, while B held an unrecorded deed of it, always provided that

* *Vigilantibus, non dormientibus, subveniunt iures.*

86. Effect of Fraud. all parties had acted honestly and could prove it. But an unrecorded deed or mortgage always is subject to suspicion of fraudulent intent to make the grantor or mortgagor still appear to own the land, and so keep a better aspect on his credit than it really deserves; and this suspicion of fraud might be very readily accepted in court if later creditors tried to get hold of the land on the ground of fraud in the unrecorded deed or mortgage.

87. Land differs from negotiable papers. Even such a formal instrument as a deed can be set aside on the ground of fraud, and so can any instrument or con-

tract whatever, except in a few rare cases where a title to negotiable paper (a bill of exchange, bank check, or promissory note) has passed on to an innocent holder. Exception is made in some such cases, because it has been found better to run the risk of an occasional fraud than to choke the avenues of commerce by impeding the rapid transfer of such instruments. Transfers of land and even of merchandise do not occur with such frequency and rapidity.

88. Technical meaning of "Estate" in Land. It may be worth while to know a pecu- liar legal use of the word "estate". The lawyers use the term "estate in land" to

signify the quantity and quality of an interest. For instance, a mortgagor and mortgagee and a lessee may each have an estate in the same piece of land, so may a widow have a dower estate, or a widower a courtesy estate, and perhaps a creditor may have a judgment, all in respect to the same piece of land. The largest possible estate is called a fee simple—when the land belongs to a man and his heirs or assigns forever. The person holding that can carve out all the lesser estates from it if he sees fit. Sometimes he carves out so many that the fee simple is worth less than nothing—for instance, he may give a mortgage for more than his estate is worth, or even let taxes accumulate against it until they amount to more than the fee is worth.

The estate of a lessee is technically called in the law, an estate for a year, or from year to year, or for

89. Rights under estates for Years. years. An estate for a single year or from year to year, hardly carries the same rights as an estate for years, but usage varies a good deal in the different states. Generally the rights, so far as not specified, would be inferred from the length of the term. A long term would imply the tenant's right to make material changes; while in a short term, the tenant could not make material changes, and would not be apt to, tho he would generally have a right to proper use of wood, and to gather a crop that he had planted, even if it were not ripe when his estate terminated; tho if his estate were for a single year, he would not be apt to plant one that would mature too late. A lessee has a right to use the estate as his own, unless he is restricted in the lease. Otherwise he may use woods and mines, gather crops, remove and alter buildings, and construct new ones, tho of course if his lease is very short, he would not naturally do all these things. Yet he cannot destroy a wood entirely, but may use only what fuel or timber can reasonably be spared from it. Nor can he destroy anything else so as materially to lessen the value of the property. If he did, he would "commit waste", as the lawyers call it, which would subject him to paying damages, and might forfeit his lease.

If he puts up a new building, he cannot claim its value when his interest terminates, unless by agreement with the owner of the fee—the landlord.

89 (a). Repairs. The landlord need not make repairs unless so stipulated. Otherwise the tenant must make enough repairs to return the property in as good condition as he received it, "ordinary wear and tear excepted".

The tenant need not repair after a fire unless he wants to, but he must continue to pay rent, unless otherwise agreed. There is generally a special agreement, however, that the landlord shall repair unless reconstruction is necessary, in which case the lease shall come to an end.

The lessee can transfer his interest to another tenant,

89 b). Subletting. unless the contrary is stipulated, tho he still himself remains liable to the landlord. If the tenant does not pass on the money to the landlord, the landlord can eject the subtenant, but if the subtenant wishes, he can guard against that by paying the landlord direct.

89 (c). Terminability, notice. If a tenant for a year continues on into a second year without anything being said, he can continue for the whole of it, and must if the landlord wishes. To prevent that, notice must be given, under the old rule, six months before the end of the year; now, generally three months, tho people are not very particular as to the exact day or week.

An estate for a month follows the same general rules as an estate for a year.

90. Rights under life estate. The rights of an estate for years belong also to an estate for life—either for the tenant's life or for the life of another person. In the latter case, if the tenant die before the other person, the other person would not enter into possession, but the tenant's heirs, or anybody appointed in his will, would enjoy the estate during the life on which it was conditioned.

In addition to the estates already mentioned, there are estates terminable at the pleasure of either party—
91. Under estates at will. called estates at will, which carry hardly any privileges but occupancy. There are some other infrequent estates that it takes something of a lawyer to understand.

92. Appurtenances. Besides the various recognized estates, there are certain privileges sometimes attaching to land, either by grant or prescription (82 k), and going with it when it is transferred, even without being named more specifically than under the general title of "appurtenances." They are generally in the nature of rights over neighboring land, such as rights to pass or carry pipes or wires over it, or to take wood or game or fish from it, rights of way, of drawing water, and of "antient light"—light not to be obstructed by building (abolished by statute in New York and some

other states); and among appurtenances are also generally included rights to use party walls, and rights over adjoining highways and waters. These rights generally "go with the land", as the air and sunlight do, tho for safety's sake, grants should generally name the land *and its appurtenances*.

Appurtenances very often accrue by prescription, especially rights to "antient light", rights of way, and of drawing water.

92 (a). Party walls. Party walls are very frequent in cities where a few inches in the width of a room may be valuable. A person building puts half his wall on the land of an adjoining neighbor, under agreement that the neighbor may insert his beams on the wall and use his side of it. Usually a price is agreed upon for this, which should be looked up in searching title, as the conditions, if registered, follow the land, whether expressed in the latest deed or not. The adjoining owner need not always pay: for he may be so uncertain whether he will want a wall of just the character proposed, that while he is willing, on the chances, to have the wall partly on his land, he will take no farther risk. Yet, for the sake of gaining space, the builder may be very glad to put it there without any compensation for its use. Neither side can tear it down without the consent of the other, but either can add in any way that does not damage the other.

92 (b). Land beside roads. When land abuts on roads in built-up districts, the road sometimes belongs to the municipality, but in rural regions generally, the owner on each side owns to the middle, and is entitled to anything growing on his side. The public have right of passage over the road, but only so long as they keep it in passable condition. If it is not properly kept up as a road, the use of it reverts to the owners.

92 (c). Land by water. Regarding streams, each riparian owner owns to the middle, and unless the stream is navigable, the riparian owner has the sole right to fish in it opposite his bank. Regarding an owner

on a bay miles wide, or on the borders of the sea, the laws of different states vary very much. In Maine and Massachusetts, for instance, a riparian owner on tide-water holds to average low-water mark. But in New York, on the other hand, he owns only to the ordinary high-water mark; the state owns from there for three miles out—as far as a cannon would carry at the time the right was determined; and beyond that, the sea is everybody's.

As to rights to bathe from the shore of any water, and to land on it, nobody has a right on another's land; so of course the question cannot arise at all where the law is as in Maine and Massachusetts; and where the law is as in New York, the question can arise only regarding the space between high and low water, which belongs to the state. The state often grants control to the riparian owner. Otherwise the rights so far as fixed at all, largely rest on local custom, and are not yet generally clearly determined by courts or legislation. Ordinarily, whoever pleases will go on the strip after shell-fish, tho he cannot cross another's land to do it, but must go by boat from some place where he has a right to keep a boat.

Wharves for shipping, in some states, are generally owned by municipalities, and some wharf privileges are sold or leased to private parties for permanent use, while some are retained for the general benefit, usually on the payment of fees. In other states, as the riparian owners control to low-water mark, landing and wharf privileges generally spring from private titles. On the great lakes, the "navigable stream" rules prevail, not the tide-water rules, the riparian owner owning to the middle, but the public having the right to navigate and fish.

The casual landings of people boating for pleasure, or merely touching to land a passenger or a package, are not generally taken account of; and along shores and banks generally, if the privacy of owners is not unreasonably disturbed, they are not apt to object to others' landing. If they do object, the rights are the same as if the trespasser had come by land.

93. Restrictions. If an estate is granted subject to conditions or restrictions of any kind—such as not building on certain portions, or not carrying on offensive trades, or using only for dwellings, or a limited number of dwellings, the restrictions follow it during the whole estate originally granted, even if the estate be a fee simple; and the records should be searched for such restrictions, just as for mortgages, judgments or any other encumbrances. Restrictions can lapse under the Statute of Limitations (82 k) as even the ownership itself can, if somebody successfully acts counter to it for twenty years. So, if somebody acts counter to a restriction, for twenty years, without anybody attempting to enforce the restriction, nobody can enforce it thereafter. There are exceptions, but we have not space to go into them: of all products of the human mind, the Law is the most immense and the most complicated—so complicated that there is probably no rule without exceptions. That is one reason why a person should be very slow to act in a serious matter without the advice of a good lawyer.

Now that we have some notion of the complexities of interests in land, it is natural to inquire whether it seems inevitable that transfers of them must involve so much delay, trouble, expense and risk of bad title; and it is pleasant to know that, just as the cumbrous forms which deeds had reached have been remedied, so remedies have been found for the other cumbrous usages. But the remedies have not yet been universally adopted, because usages which have been evolved through such a long past, have their roots tangled up in so many things, that it is hard to eradicate them without wide disturbance. In some places, some proposed land reforms cannot be adopted without amending constitutions. Moreover, social affairs generally are so complicated that before any comprehensive measure is tried, it is hard to tell how it is going to work. There is no more certain mark of folly than a glib cocksure plan to remedy a social difficulty. Wise people are very slow to substitute innovations for evolutions. Yet we

must not stick in the mud for lack of trying to get out.

94. *The Torrens System.* The best method of land transfer yet suggested, appears, on the whole, to be what is known, from its originator, as the Torrens System. It was first used in Australia in 1856, then spread into the neighboring British possessions, into British America, and into Great Britain itself, and has lately been enacted in Illinois, Ohio, Massachusetts, and (for some counties) Minnesota.*

Its principal objects are to save the delay and expense of frequent searches of titles, and the losses from uncertain or imperfect titles. This is effected by granting certificates of title under the guarantee of the state.

Different states arrange different details, but the proceedings are something like this: any person claiming an estate in a piece of land (at least the absolute ownership,—a fee simple: the minor estates are not always directly provided for, but are indirectly), can go to the proper authorities (they vary in different states), asking for a certificate of his title. The officers search the records, and make out a description of the title as it then appears, stating in whom the fee stands, and in whom stand any claims, such as dower, mortgages, judgments, estates for life or years, etc. Then they issue notice by advertisement to all persons claiming any rights in the estate, and by mail to all whose addresses are known, calling upon them to present statements of their rights within a given time. At the end of that time, they judge all these rights, and complete their statement of the title according to the rights which they consider established. If anybody contests any of their judgments, the case is given to a court, from whose decision lies a right of appeal to a higher court, whose decree is final; and then a certificate of title embracing all the rights is recorded. The certificate may state that an unencumbered fee simple rests in one individual; or the certificate may vary so far as to indicate a fee vesting

* The first enactments in Illinois and Ohio did not fit the constitutions of those states. In Illinois a second enactment has been made which promises success.

in several persons, and a variety of rights vesting in several other persons. But such as it is, the certificate states the authoritative title of the property, which can never again be questioned. Duplicates of the certificate are given to persons having rights in the property.

The chief advantages of these certificates are that while under previous usage, if anybody wants to sell any rights he may have in a piece of real estate, or pledge them for a loan, the title has to be searched, at an expense of money which may be greater than a loan will justify, and at an expense of time which may lead to his bankruptcy before the value of his rights can be ascertained; but with the modern certificate, he can show his rights at a glance, and an expert can appraise their value very quickly. Moreover they are guaranteed by the state, and therefore not open to any question, as rights in real estate under the usual registry system always are.

If the officers make some mistake which does injustice, the Massachusetts plan is that the title, as certified, cannot be questioned (except, of course, for fraud), but if anybody can prove himself wronged without any fault or carelessness of his own, he is made good through an insurance fund which is accumulated from a trifling percentage (one-tenth of one per cent.) of the value of each piece of property certified, which is paid when the certificate is granted, and also whenever the property passes by descent or will.

The expenses of searching title and preparing the certificates do not come out of the general taxes: so people who own no land do not have to pay them for the benefit of those who do; charges are made for preparing the certificates, but they are generally no more than that of an ordinary search of title, and they are paid once for all; while under the old system, as much generally has to be paid every time a piece of property is sold or mortgaged—sometimes a dozen times a year.

In Massachusetts, the holder of any certificate whose interest is less than the fee, is prevented from raising money fraudulently, by having a mortgagee's duplicate

so stamped; and when the mortgage is paid, it is given up and stamped "canceled". A similar arrangement can be made, of course, when certificates are issued to holders of other interests, tho there are not always provisions for such issue.

But as a title good to-day may not be good to-morrow, sales and encumbrances coming after the certificate is issued are effected by just the same documents as before, only the first principle, of course, is that no change in the rights to the land takes effect before it is recorded in the certificate and its duplicates. Where ownership of the fee is changed, a new certificate is issued, and the old one stamped "canceled". To use an imperfect certificate with intent to defraud, is made subject to heavy penalties, and anybody purposing to accept a certificate can compare it with the original at the recorder's office in a few minutes, for a trifling fee, instead of waiting a month to get the title searched, and incurring heavy expenses.

Titles by prescription (82 k) cannot be obtained under the Torrens system (in Massachusetts, at least) against a title that has been certified under this system, which seems, on the whole, a just provision, tho it may well be questioned.

In states adopting the new system, getting a register of property under it, is made voluntary, and interested persons generally apply for certificates only when they sell or mortgage, or grant estates for years. Thus the labor is spread over time enough to make it quite practicable.

If mortgages, leases, etc., should make the certificate of an active piece of property, unwieldy, there seems nothing to prevent the owner applying for a new certificate with all the dead changes left out, and simply showing in whom the rights vest at date.

CHAPTER VIII.

PERSONAL PROPERTY.

Evolution of Rights in It.

Having traced the evolution, protection and transfer of rights to Property in Land, we come to treat in detail of the similar features of the Personal Property developed out of the land. In our first summary (51, 51 a) we found the agencies that develop personal property to be Land, Labor and Ability.

Labor generally means effort of any unattractive kind, but here I mean the work of a man's body.

When we were speaking of the monkey picking the fruit, we called the third factor "intelligence", but "intelligence" is not broad enough to cover the ground: judgment, knowledge, forethought, patience, honesty and a host of other qualities are needed now, and we sum them up under the name of Ability.

The differences in men are so marked, then, as to divide them into two classes—men without much ability, who perform the manual labor, and men with great ability, who tell the others what labor to perform. Under such a classification, as under others in all sciences, the divisions overlap somewhat, but they will do very well for our purpose, if we bear in mind two of the particulars in which the classification falls short.

95. Product varies with ability, The first is that many laboring men, tho guided more or less by the ability of other

men, have ability of their own. Tho a common laborer has usually but little ability, and shows it by getting only a dollar a day, an average mechanic has much more ability, and shows it by getting two or three dollars a day; while a small number of mechanics of considerable ability, get as high as even ten or twenty dollars a day.

As Mr. John A. Hill said in his notable circular to his men (reprinted in *The World's Work* for February, 1906) during the printing strike: "Those of you who know me, know that I am inclined to pay more than the scale to good men, or grant them other privileges that amount to the same thing."

An illustration of what labor guided by its own ability, can do, was afforded in the truckmen's strike in New Haven in 1903, when some thirty Yale students took the places of the strikers, as a lark. They were found, despite their inexperience, to do more loading and unloading than twice as many truckmen. But men of such ability do not remain truckmen, but are soon guiding the labors of other men.

In successful businesses, the workmen are nearly always under the guidance of men of vastly greater ability, who get many times as much as the workmen.

The second qualification to bear in mind if we treat the industrial world as divided into men of labor and men of ability, is that, in England at least, the laborers are fast learning to be their own guides. Coöperative industries carried on by the workers themselves, made wonderful progress during the latter part of the nineteenth century.

The rewards of ability vary much more than those of manual labor. When you yet up into the ability that can guide the labor of others, men vary much more than they do when the ability is only enough to guide one's own labor; and in the long run, the rewards vary somewhat with relation to the ability, tho the men of the very greatest inventive ability, like the creators of the steam-engine, the telegraph, the power loom, the cotton-gin, the reaping-machine, and other

great inventions, who influence the labor of nations and generations, never reap a tithe of their own production; while on the other hand men of administrative ability, like Stewart and Vanderbilt, whose work is mainly in handling other men, and whose work lives but little longer than they do (except in their families' fortunes) reap a much larger proportion of their production.

Practically, a man's ability is determined by the value of what he produces; and in the long run, despite the poor pay of some of the inventors, most men are paid accordingly.

95 (a). even the product of the lowest Laborers. A striking proof of how wages vary with ability, is given in Brassey's "Work and Wages". He says that he found wages the world over regulated by the amount of ability; he got the same labor for the same amount of money in one part of the world as in another. If he paid ten cents a day in India, it took ten men to accomplish the results that it took one to accomplish in countries where he paid a dollar a day. In May, 1905, the manager of the Corbin estate in Greenville, Miss., reported that in cotton he could make \$5 with Italian labor where he could make \$1 with negro.

The difference did not lie in muscular strength. Even in mere picking or shoveling, a man of ability will accomplish more than a man of much less ability and more strength: it is more a matter of ability than of strength—of intelligence in work, including energy and faithfulness, which are considerable elements of ability.

We shall find, as we go on, that false reasoning, especially regarding convict labor and protective tariffs, is often based on a false assumption that a day's work is the same thing from one wage-earner as from another, in one country as in another, and at one price as at another: so we may as well consider some more illustrations of the utter falsity of any such ideas. In Canada, Brassey found English labor at 5s. 6d. cheaper than Irish at 3s. 6d.; in England, 3s. 6d. cheaper than 1s. 6d. in Ireland, or than 5d. in India. In a stone-

quarry in France, he paid Englishmen 6 francs a day, Irishmen 4, and Frenchmen 3, and found the Englishmen the cheapest of the lot. General Walker * says that the English cotton-spinner is paid twelve times as much as the East-Indian, and yet undersells him in his own market; that an English weaver tends two or three times as many looms as a Russian, and that the English looms run faster. Brassey says that three English railway navvies do the work of five French ones. It is universally known that American laborers surpass those of the rest of the world in efficiency—strength, intelligence, and saving, as much as they do in pay. In France it takes forty-two men to do the work at an iron-furnace, that in England is done by twenty-five. English farmers on the shores of the Hellespont prefer to give Greeks £10 a year rather than give Turks £3. Women in English cotton-factories get about 13s. a week, while French, German and Belgian women get about 8, and Russians about 2½; and the English labor is the cheapest. In different parts of England itself, agricultural wages varied from 9s. per week to 16s., and the 16s. laborers were the cheapest. Mr. Atkinson says ("Facts and Figures"): "With one dollar's worth of labor . . . here with labor-saving machinery, we can buy the day's hand-work . . . of Russia, Italy and Asia."

In view of such startling facts, no wonder that there is a constant conflict between Labor and Ability,

* Political Economy, Advanced Course. General Walker's "The Wages Question", Chapter III, should be read on this and collateral topics.

General Walker farther quotes various authorities to the following effect: an English wood-sawyer will do the work of thirty-two East-Indian ones. He gets but about eight times the pay. An English laborer does and receives about twice as much as an Irish one. The provisions are cheaper in Russia than in England, it costs six to eight times as much to mow an acre of hay in Russia as in England. It takes twice as many hands to do most kinds of factory work in France and Germany as in England. In Belgium a hand prints from one hundred and sixteen to three hundred pieces of cloth a day, in England the average is one thousand.

96. Difficulty of adjusting Rights between Ability and Labor.

especially as many even claim that the men who do the hand-work make everything and ought to have everything. Let us, then, try to ascertain how the respective property rights of Labor and Ability are evolved. It is plain enough how Labor increases production, but outside of the ability of the individual laborer, it is not so plain where Ability first begins to increase it. That most important step takes place wherever one man wisely tells another what to do. A

97. General Functions of Ability

common laborer cannot dig a ditch straight without a person of superior ability to show him how; or he can't go into a wood and chop down the trees that ought to be taken, without somebody of superior ability to mark them for him—he cannot even remember them unless they are marked, but will chop down the wrong ones.*

97 (a). The civilized man loses the savage's independence.

Such a laborer is but the primitive man, tho evolved up to a certain disadvantage. The savage man is generally able to get his food from hunting and fishing, and to make his simple clothes and shelter. But the so-called civilized man, especially in villages and cities, has not generally the woods and streams to resort to, and is not accustomed, like the savages, to make his own raiment and dwelling. Therefore, as a rule, the moderately evolved man, unless a higher evolved man initiates an enterprise and gives him a chance to take part in it, cannot get his own food, clothing and shelter, and is unable to find anything to do. The man of only average ability, if he is out of a job, does not get another, before the man of more than average ability offers him one. Until then he is apt to sit down and fold his hands, and complain that he has not tools and material, and could not find a customer

* The author once took an excellent woodchopper into some pleasure-grounds and pointed out a dead tree to be cut down. Near it stood a beautiful live one. After the employer's back was turned, the chopper cut the live one and left the dead one standing.

if he had, etc., etc. And for all this, he blames the rest of mankind: not himself and his maker. But another type of man, tho vastly rarer, goes and puts in the first load of coal he finds lying on the sidewalk, or shovels off the first bit of snow he finds unremoved, or in summer mows the first lawn that needs it, or takes some other of the thousand jobs lying around for somebody to do. This man, however, is soon an enterpriser, while the other man is always a wage-earner, and blames the enterpriser for it. It would be well if everybody should read Sill's little poem "Opportunity" and Bunner's little story "Zadoc Pine". Both are admirable and enjoyable as pieces of literature, and as instructive as they are delightful.

97 (b). Things made to embody thoughts. Any material thing made by man is simply the embodiment of an idea. The value of the thing depends mainly on the value of the idea; and as industries have advanced, the ideas have more and more been contributed by exceptional men, and embodied by ordinary men.

There is hardly a thing made for wages, from pins to palaces, that is not simply a putting into form, by many men, of ideas furnished by a few. Everything turned out in the factory is of a shape and size that somebody else tells the laborers to make. The laborers on every railroad are simply building a line laid out, in direction, grades, width, material, by somebody else; building stations located and designed by somebody else; making locomotives and cars designed by somebody else with wonderful ingenuities and conveniences invented by somebody else; and when the road is finished, running trains at hours and rates of speed devised by somebody else.

Take away the few men of ability, and none of these things could exist; take away an equal number of laborers, and the things would exist all the same.

97 (c). Averages and Ability. Now ability is rare. There is a law of nature, first brought prominently forward in regard to human relations by Galton, that of a given number of things of the same kind, the most

will cluster around the average, and become rarer as they depart from the average. So it is with men: of a hundred, probably eighty will have ability enough to produce only the equivalent of the minimum wages —for comparison's sake, say a dollar a day; ten out of the hundred can produce, say, two dollars; four, four dollars; three, ten dollars; two, twenty dollars; and possibly one, fifty dollars. If you want to find a hundred-dollar-a-day man, you will probably have to look into a group of a thousand men; to find a Vanderbilt, you will need a generation; for a Watt or an Edison, a century; for a Euclid or a Newton, ten or twenty centuries; and for an Aristotle or a Spencer, half of human experience.

Galton represents the facts graphically by a target where the shots are naturally thickest at the center, and scattering toward the edges. For our purpose, the representation would be better by a horizontal band of dots, with the dots thickest along the space representing the average, half way from the top to the bottom of the band, and growing thinner toward the upper and lower edges. Then a few should be scattered above, to indicate men of special ability; and a few below, to indicate men of special stupidity.

97 (d). The lower depends on the higher. Now the men below the average of ability have done their best only under the guidance of the men above it. The

workmen have needed their foremen, the foremen have needed their employers, the employers have needed the Watts and Edisons, the Watts and Edisons have needed the Euclids and Newtons, and the Euclids and Newtons have, unconsciously perhaps, needed the whole environment of thought shaped by an Aristotle or (to shift the matter more toward the future) by a Spencer.

And it is not well to forget, as an essential of even material well-being, the moral atmosphere created by a Gautama, or a Christ.

But to come back to our daily experience.

97 (e). "Finds work." In the higher walks of industry, the man of ability finds the work for other men to

do: they go to him for work, and unless he "gives work", they remain among "the unemployed".

97 (f). Increases product. He increases product by organizing men of comparatively little ability so that they can produce what is wanted, and produce more of it, carry more and exchange more than they could if left to themselves. He decides what enterprises will pay, undertakes them, gets together the capital for them, and often invents machinery and industrial processes.

97 (g). Saves waste. He effects economies, often, if he is a man of sufficient ability, by abandoning enterprises before they run at a loss. Moreover, as Labor, unless guided by Ability, either on the laborer's own part or that of his manager, is simply the mere physical effort of the animal or the savage, it is apt to be wasteful, and often destroys more than it produces. In most cases, unless the superintendent of the laborers has enough ability to set them making the proper things the proper way, they produce less than nothing, by spoiling material and producing articles that will not sell for what they cost. The "bargain-stores" contain many things not worth as much as the materials and wear of tools (not to count the labor) that it took to make them. On the other hand, Labor guided by Ability makes nearly everything it touches worth more than it was before.

The man of ability, however, generally does more than conduct the processes; he generally organizes the enterprise from the beginning. Because he undertakes the enterprise, he has sometimes been called the undertaker, and some people who do not like that word have taken a French equivalent, *entrepreneur*, but English is good enough for us, and we will henceforth call him the *enterpriser*, as probably has been done more than once already.

98. Detailed Functions of Ability. As already intimated, the enterpriser has first to decide what enterprise will pay; and that is the most difficult task of all. A market may reach to the remotest corners of the world, or may be restricted to a fastidious class in a few great cities, or may depend on unaccountable shifts of fashion, or on a

million mysterious causes: yet the enterpriser must know what the market wants, and how much.

98 (a). Prophecy- No other man, perhaps, so needs the genius of the prophet. It is no wonder that only one man in thousands has it to any marked degree.

98 (b). Raising capital. After the prophet has determined what

to do, unless he has enough money of his own (which is seldom the case, in the industries so big as to supply us most cheaply) he must get other people to put in their money. The capacity to find them and to make them trust him, is one great and rare element of Ability.

98 (c). At the works.

Next, if he wants a factory, he has to decide on the building and machinery that will pay, and see them well and economically constructed; to buy the material in the best market and at the most favorable time, sometimes getting credit if he thinks it wise to buy more than he has money to pay for at the time; to get together the men, using great judgment of human nature in getting honest and capable foremen and accountants; to see that the men are properly organized, as already explained (and he has, by the way, to keep this in mind in getting up his factory and machinery); then he has to manage the men and their strikes and labor-union troubles.

98 (d). Outside of the works.

Outside of his works, he must determine from day to day just what styles of his product are apt to strike the coming tastes and fashions, and when and of what kinds to make big lots and small ones; to make his product known by wise and economical advertising; to find the best market for it, both in time and place; to know whom to trust and whom to press for money, and how to keep his trade; and then he has to collect the money. All this time he has to see to his accounts and taxes, and if he can, occasionally get a little time to eat and sleep and recreate himself.

99. Popular View of the Enterpriser.

Such is the view generally entertained by competent people, of what the enterpriser has to do. The view generally entertained

by other people, however, is that, as he seldom soils his hands, or uses any tool but a pen, he has nothing to do, but is a mere drone living on money that really belongs to the people who do the hand-work. Because the captain of industry does not actually use a tool, any more than a military leader actually uses a weapon, most of the people who cheered Dewey on his return from Manila are ready to say that a captain of industry is entitled to none of the results, because the work is all done by his men. The truth is that they would have been as powerless without him, as a fleet without its Dewey, or an army without its Grant.

100. Division of labor. The most noticeable process by which the enterpriser increases and cheapens production is by the effective *division of labor*. In making almost anything, there are a good many processes. If one man performs them all, he will not be as skilful in any one of them—as able to do that one nearly as often in an hour, or as well, as if he practises that one alone. Besides, if he effects a dozen, he will lose time in changing from one to another. Hence it is a great aid to production, to have a factory big enough to have separate men for separate processes. But if there are a dozen processes, that does not necessarily mean a dozen men: some processes would take more time than others, so the man doing the quick ones would need more men doing the others, to keep up with him; or possibly in a small factory it would be cheaper to have some man do more than one process: that would of course depend upon the size of the factory, and it would also depend on the ability of the manager: unless he decided wisely how to portion out the work, he would have too many men for one process, and too few for another, and so throw everybody's work out of gear. If the men decide this themselves, each man would want to do what he liked best, and he could not know as much about the other men's work, and what the material and the total result aimed at would require, as a man whose business it should be, while doing nothing special himself, to watch it all,

and make all work together. Even where workmen have owned an establishment together, they have had to make a leader and obey him, and generally to pay him more than any of the workmen got (118). When

^{101. Few men can conduct large enterprises.} it comes to watching it all, there are few men that have the ability, even if they could have the opportunity: most men who try management make a botch of it (120). As a matter of fact, of the men who try to perform the duties of the enterpriser, the vast majority fail.*

The general reason that very few men are fit to conduct a large business, while so many men conduct small ones, seems to be that for a large business, the preparations have to be made for months—sometimes years, ahead. The little businesses that buy from the large ones, can buy from one day to the next, and need only take from day to day, or even from hour to hour, what they see that people want. Moreover, as a large business cannot have the enterpriser's eye everywhere at once, he must leave much of the supervision to lieutenants who themselves have ability; and the capacity to search out and select good lieutenants is rare, especially in combination with the other rare powers that an enterpriser needs.

^{102. Ability outside of tangible production.} What has been said in regard to organizing factories—*producing tangible goods, applies equally to organizing stores and railroads and steamships and hotels and all other forms of industry.* It used to be a jocose way of describing a man of little ability, to say: "He can't keep a hotel." Unless there were men who could organize something bigger than a stage-coach, we should have to go in

* Mr. Joseph H. Walker of Worcester, Mass., lately found on investigation that of every hundred men in business in that place in 1845, sixty-seven were out in 1860. Out of seventy-five manufacturers in 1850, only thirty left business with any property, and only six of the sons of the seventy-five had any property. In 1860 there were one hundred and seven manufacturers, and only sixty left business with property. There had not been time for many deaths: so failures are the only explanation. (Wells, "Recent Economic Changes.")

stage-coaches; unless there were men who could organize something bigger than a sloop, we should have to go in sloops; unless there were men who could organize the big shops, we should have to run all over the cities to get what we want from a variety of little ones, and then should not have as wide an assortment to choose from, or be able to get what we could find, at as low a price.

^{103. "The Great Industry" cheapens product.} In stores and railroads, etc., where there cannot be much division of labor, the cheapening is effected by making the industries large: in most industries, the more you do of a thing, the cheaper you can do it. A bookkeeper can make a figure 9 as cheaply as he can make a figure 1; a wheelbarrow can carry a bushel of potatoes as cheaply as it can carry one; a locomotive can take a dozen cars in a train as cheaply as one; a man of ability can turn out or handle a thousand pieces of goods easier than a man of no ability can turn out or handle one. Stewart, the first great shopkeeper in New York, as compared with all previous shopkeepers, is said to have saved the people who shopped with him ten per cent. Commodore Vanderbilt, by cheapening freights from the grain-raising and flour-milling regions of the West, is estimated to have saved every man on the seaboard a dollar on each barrel of flour that he bought.

^{104. Enterpriser's Income not at expense of Labor.} The fortunes of men of ability are usually only a small portion of what they create and save for other people. If the inventor of the steam-engine were alive and could have half that he has saved for and bestowed on other people, probably no one country in the world would be rich enough to pay what all countries together owe him.

^{105. Invention and Evolution.} Let us look into this matter of inventions a little more closely: we shall have to refer to it more than once. What do we really mean by "the inventor of the steam-engine"? The fact is that no one man ever invented any great thing. The word inventor is generally used in any particular country.

for the last man in that country who took the last important step in the evolution of any great invention. When you try to find out who invented the steam-engine or the telegraph, for instance, from a book—especially a schoolbook designed to teach patriotism, if it is an English book, you will be apt to find the credit given to an Englishman; if a French book, to a Frenchman; if a German book, to a German; and so on. The explanation is not so much that patriotism goes wide of the truth, as that, in each process, so many elements enter, that it has taken a long time to evolve them; and that during this long time, the whole civilized world has learned about them, and people in all countries were apt to take the final step at about the same time—or rather a variety of steps which accomplish the result.

But whether we call each important apparatus giving us the control over the powers of Nature an evolution or an invention, it is the product of ability.

106. Labor abounds in poorest countries. Now which produces most of the wealth of the world, Nature, Labor or Ability? Generally Nature holds out more wealth to the poorest savages than to the richest people on earth, because the wealth of the savage's country is yet untouched; but the savage has not the ability to develop it. Labor is more abundant amid the famines of China and India than amid the wealth of Europe and America, but the Chinese and Indians have not the ability to guide it. So, as places with the most natural wealth and the most labor are the poorest, and those with the most ability, even tho their natural wealth be partly used up, are the richest, the difference between the rich peoples and the poor ones must depend upon ability.

From the point of view of civilization, then, the men who make inventions and organize industry secure us all that we have in advance of the people whose industries are small. If there were no great inventors and organizers of industry, the civilized world would have to go backward to the condition of people like the Chinese and East-Indians, who have little inven-

tion or organized industry, and the world would have to stay there until men of ability should arise.

But tho our discussion must deal principally with the agencies which give all men, in proportion to their means, the largest variety of utilities at the lowest price, I should be very sorry to be understood as claiming that result as alone constituting civilization. The civilizations of Greece and Japan show us much to desire, and yet they have been characterized by a noble simplicity that suggests the question whether our greater number of appliances may not divert too much of our attention from more important things.

107. The enter-
priser must pay
good wages.

Now we come to a hard question. When the product is sold, is it at all certain that the enterprisers will give the employees their correct share? In other words, are wages generally fair? Of course the share is generally given before the collection is made—a lump sum is agreed upon. There is no way of making each man's sum exactly equal to his share in production; but in the long run, wages must reach an average that is fair, and probably more than fair: the able laborer gets more than the unable one everywhere (95 a).

The reason is not only that men of ability so increase the product that they can afford to pay more than the laborers would produce alone, but because all men so much prefer to be employers rather than employed, that they will pay all they can afford, and more, rather than be driven out of doing business for themselves. Therefore, except in times of unusual depression, there are employers actually bidding more for labor than they can really get back from it. They can bid high because men of little ability are constantly saving or inheriting or borrowing capital. This they fritter away in bidding for labor to conduct enterprises that are beyond them. Yet while men of little ability pay more for labor than *they* can make it worth, men of great ability can make it worth more, and therefore, in average circumstances, bid it up in competition with each other to

the point where they are left only a reasonable profit.

107 (a). Often in bad times. But in times of depression, when there are not as many jobs as there are men, men who need places often take work for really less than they produce; yet probably not oftener than employers pay more than the market will return, rather than shut down.

So much for the services that an enterpriser, when he has ability enough to succeed, renders to the community and to his workmen. Now if he pays his men all they produce, or more, of course he can get his reward only out of product that would not exist unless his ability called it into being. True, he does not make or even handle a thing with his own hands, but he enables other men to make or handle two, or perhaps a hundred and two, where they could otherwise handle only one. He gets his reward by making more things with a given amount of plant, labor and material. Moreover, where there is a big supply, things are always cheaper than where there is a scant supply.

But Vanderbilt and Stewart did not make things, yet in one sense they did make things-in-New-York that otherwise would have been things-in-Minnesota, or things-in-Belfast. There is a difference in value between a thing-in-New-York and a thing-in-Minnesota. If there are more barrels of flour in Minnesota than people want, and not as many in New York as people want, people in New York will give more for them than people in Minnesota. The man who carries them, adds to their value, and if he carries them cheaply, people in New York can afford to pay him a profit for carrying them. So with linen between Belfast and New York, and in short with all articles moved by commerce.

109. Production not all by hand. It is a very prevalent fallacy that those who do not affect the mechanical or chemical qualities of an article, "produce nothing". This is but an extension of the fallacy that the enterpriser produces nothing, because he does not put

his hands to his product. The value of an article depends upon its capacity to satisfy a need: so every man who touches an article toward placing it where it is more needed, must add to its value—must really “produce” the added value. So of course to a still greater extent, must a man who *organizes* transportation and exchange.

To go a step farther, the bankers and promoters who finance these agencies, add to the value of the articles handled; and to take other steps, so do the governments which regulate all finance and industry; so do the armies and navies which defend the country; and now, to take it to a higher issue, so do the thinkers and writers who promulgate the correct mechanical and economic principles on which roads, machinery, vessels

<sup>110. Destruction
of bad economics.</sup> and warehouses should be built; and farming, mining, manufacturing, transportation, exchange, banking, promoting, governing, and fighting be conducted. Still another step: the promulgation of incorrect principles of finance and taxation probably destroys more value than earthquakes, eruptions and wars. The silver agitation about 1890 was estimated by David A. Wells to have destroyed values to the extent of a thousand million dollars, and the greenback currency of the civil war probably destroyed as much, and we shall see farther evidences of destruction, when we come to consider taxation.

<sup>111. Values depend
on sound morals.</sup> To take a step higher still: economic and political principles and moral principles shade into each other, and are often identical; so, for that matter, do mechanical principles and moral principles: “an honest job” is a phrase of very wide and just application. It ought to be easy then to realize that the promulgators of sound morals and the inspirers of good conduct—the good preachers and orators and writers, also create value in material things—probably more value than all other classes of men put together. Probably if all that has been accomplished in the world by Christ, Confucius and Gautama,

not to speak of Aristotle, Bacon and Spencer, could be blotted out to-morrow, much the greater part of the value in material things would be destroyed. An adequate explanation of how this would come about, would carry us farther afield than this treatise can go; but some hints that will help the competent student to work the matter out for himself, have already been given, and if he will keep the subject in mind, he will find it full of such hints. Some very specific ones are given in paragraphs 330–330(b). He can start now with the reflection that with the current morality swept away, his own pocketbook and the coat on his back would be vastly less safe, and therefore vastly less valuable, the next time he leaves his study, and even while he reads this in his study.

It hardly need be said that the pay of
112. Paradoxes of distribution. the various contributors to the value of

goods is very unevenly distributed, and one is sometimes tempted to believe that those who contribute most, get least. Certainly the august beings who rule the centuries from their tombs, knew little material splendor; and certainly the men at the other extreme who can do nothing but what they are told, and do that poorly, get a share of the good things of life, which, tho small, is larger than their own production —vastly larger than they could get if left to themselves.

And paradoxical as it seems, and in illustration of the old saw that extremes meet, is the fact that in recent times, the other portion of the business world that has been notoriously getting more than its share of production, is at the other end of the line—not the enterprisers who are immediately associated with labor—not the “captains of industry” at the factories and stores or even on the great public works like the railroads and steamship lines, but those who determine what great public enterprises are needed, and gather up the scattered units of capital from all over the country or all over the financial world, into masses big enough for the great enterprises—the promoters of the railways and trusts—the bankers and the officers of the great insurance com-

panies and other financial corporations. In their principal developments, the functions of these collectors of the general capital are comparatively new, and are not yet well regulated by competition or by law, or even by public opinion, which is just now in a state of hysterics over them. It has therefore been easy for the men conducting these functions to take heavy toll on the money of other people passing through their hands. A heavy toll is legitimate, for the ability exercised is great; but that ability is too often devoted to making the toll unduly great.

113. Paradoxes of opinion. The subject, however, is now prominently before public opinion and the law, and

reasonable regulation must in time be secured—secured probably long before reasonable regulation will be secured for the striking, boycotting, rioting, burning, murdering brute who thinks that because his hands follow the dictate of other men's brains, he makes everything and is entitled to everything; and assumes that his right to stop work is a right to conspire with others to stop together, and force others to stop with them, and so paralyze the activities on which the welfare of all depends—of himself more than the others, if he but had the wit to see it.

114. Why returns of labor are nearly fixed.

Now we reach the very serious question of how it comes that the laborer seldom gets anything above the current rate of wages, while the enterpriser and promoter may get hundreds or thousands of dollars a day. The reason is that things which can be found anywhere, like staple products or common labor, are always offered for sale in lively competition, and so the price is driven down to pretty near the cost of production. Mere manual labor of the pick and shovel is found anywhere, and can live on cheap food and lodging: therefore its cost is low. The more intelligent labor of the high-class mechanic, needs a nervous system kept well by good food, sleep and shelter, informed by some education, and recreated by some amusement. These things cost

more money than the coarse laborer's living, and are not as generally to be found: so the mechanic gets higher wages than the mere digger; and the high-class mechanic gets higher wages than the low-class one. Nevertheless, there are enough mechanics of nearly all grades to make competition among them active (despite the regulation of their trade-unions), and so, of course, their labor is kept at a recognized, tho somewhat fluctuating, market price.

Now while all this shows why Labor is 115. Why those of Ability vary widely. restricted to its regular wages, how is it,

when we get into entirely different conditions, with the irregular and often enormous profits of Ability? Ability is scarce: it generally does not compete for employment, but employs itself; hence there is no price fixed for it. Whenever it does accept wages—as in the case of special mechanics, electricians, chemists, etc., or upper clerks, managers, presidents of companies, etc., the salary is a matter of special arrangement, and generally is accompanied by an interest in profits besides, not to speak of the St. Valentine's Day check of \$100,000, from the New York Metropolitan Street Railway to Mr. Vreeland, its president.

What determines this varying and sometimes enormous factor of profits, is that as wages and raw material have a current market price, a given amount of them being paid for by different men of ability, they will get out different amounts of product, varying in proportion to the different amounts of ability of the enterprisers; and these will produce and market this product at different rates of expense for plant, office expenses, interest on capital, freight, advertising, drumming, collecting bad debts, etc., etc. They will all have to sell at pretty nearly the same price: that being fixed by those having least talent for making good sales and holding out for high prices. The others will have to come down very near to that price to get a market; or sometimes, tho seldom, an able man may even go below the current price for the sake of broadening his market. But however the price may be fixed, the profits of each enter-

priser will be the difference between his price and the cost of producing and marketing. That difference may be on the wrong side for those who produce least with a given amount of wages and raw material, and are most extravagant in office expenses, advertising, freight, etc. Those who exercise most ability in these particulars, will of course have the most profit. That profit may be enormously increased if the ability is of the very exceptional kind that generally anticipates the course of the market, and buys material and holds on to product before a rise, and sells before a fall.

<sup>116. Capital's return
more like Labor's
than Ability's.</sup> The capitalist, instead of being the recipient of the lion's share, as he is commonly held to be, generally is that, only so far as he is both capitalist and enterpriser. Otherwise, he is only about on a par with the wage-earner. Capital is everywhere, and there is a market rate for it, just as for wages, tho as it does not generally need its income from week to week, it is more apt to take chances at a share of the profits than the laborer is: the laborer nearly always (tho not always—not in fisheries, for instance) commutes his share for a fixed sum regularly paid.

As the laborer and the capitalist are so nearly in the same boat, the unending talk of the conflict between capital and labor is mainly a survival of words from old conditions. In the early days of the great industry, the capitalist and the enterpriser were generally the same man; but even then, the struggle for shares of product was really with him as an enterpriser rather than as a capitalist. Nowadays when the enterpriser is so generally merely an officer of a corporation, in which his share may be little or nothing, and when he is apt to be a mere borrower of all or most of his capital, capital's share of product is nearly as fixed as labor's, and the enterpriser is really the person struggling to see how much he can realize after paying both.

The conflict, then, so far as there is any conflict, is between Ability on one side, and Capital and Labor on the other, when the enterpriser is not at peace

117. Ability cannot waste time and strength in grinding labor or capital.

with capital by owning most of it himself. But it is the cheapest sort of nonsense to claim that in our day men of high ability waste their time in trying to grind the face of either capital or labor: able heads are apt to be too full of making money, to bother themselves much with petty means of saving it. The pettifogging is carried on by a lower type of man; altho the wisest men make mistakes, and all men, rich as well as poor, and poor as well as rich, see their own side too exclusively.

118. Capital and labor powerless without Ability.

It is often supposed that if the laborers themselves owned the factory, or the store, or the steamboat, and all in them, they could then get along without the Man of Ability. But in the first place, they very seldom do own the establishment; and where, by saving up and putting their money together, they have owned it, they have always failed, unless the born Man of Ability arose among them. Then the born Man of Ability has generally in time got his share of the product, and until very lately (126), he has generally ended as the owner of the concern.

And he has not stolen it: without him, the thing has generally soon been shut up. But where he has taken hold, he has enabled the men to produce enough to pay their wages, and sometimes more; and what was over, was of course fairly his own production.

119. The rates of division.

Outside of a few coöperative establishments carried on by very exceptional workingmen, men without a manager have not produced enough to pay their wages. It seems to follow, then, that when an exceptional establishment does pay, the production above ordinary wages, is presumably the manager's. Karl Marx and his school say that the manager gets this production and more too. The modern school says that he gets less. Mallock says that the workmen produce five thirteenths of the output, and get paid for seven thirteenths. Sound economists agree with his general position, tho he alone

is responsible for his figures. But this does not mean that if the enterpriser gets six thirteenths of what is produced—that if every day he were paying seven hundred men three dollars apiece, he would get eighteen hundred dollars a day to each man's three dollars. It means that the six thirteenths have to pay not only profits, but taxes, insurance, rent, interest on borrowed capital, and dividends to stockholders, if there are any.

120. Enterprisers generally get less than nothing. As a matter of fact, what the enterpriser generally gets out of the six thirteenths, is something less than nothing at all—he generally uses up all the money that has been put in the business, and fails (101). The wage-earners get their share first, and next the other claimants—landlord, suppliers of machinery, fuel, raw material and merchandise, and lenders of money—get what they can, and if there is anything left (which in most cases there is not), the enterpriser gets it.

But to the casual observer of the business world, all this will read like nonsense. He will naturally ask: If the money embarked in business is generally lost—if ninety-nine enterprisers in a hundred lack the ability to succeed, how can large industries be carried on at all? They are carried on by the one man in a hundred, or the one in a thousand. Until an enterpriser has proved himself, people will not trust him with much capital. So before much is lost by incapable managers, they fail—competition weeds them out and returns them to the ranks, while the capable ones survive to conduct the large industries.

121. Handworkers of special Ability. We have spoken so far mainly of Ability as guiding mechanics or others who handle material things. Let us stop a moment to consider other men of ability who work with their muscles. Artists, musicians, public performers of all kinds, work with their muscles, and sometimes those of great Ability make thousands of dollars an hour. "Goods" are not all of them mere material things: art, literature and science are among the highest goods, and people pay high for them, when of best quality, whether in music, books,

pictures, statues and beautiful houses, or fees to doctors, lawyers and engineers.

122. ^{Property not} ~~all tangible.~~ Property, then, is not only in tangible things: some of the most valuable properties are in mere rights, such as the rights to make and sell patented inventions and (tho seldom of equal value) copyrighted books, music and pictures. Some other examples of mere rights that have a money value, are that at the great fairs, the rights to keep restaurants, rent out rolling chairs, sell papers, candy, and even peanuts, are sold for large sums. So often are rights to put down railways, even before a tool has been used in the work.

Of course, to exercise ability and reap its rewards, a man need not necessarily either guide hands, his own or others', in producing or handling material things. Not to speak of inventors, the lawyers and statesmen regulate productive industry, and so add to production. We might liken the world to steam machinery. The steam-power—the engine, is labor; machines—like looms and cotton-gins, are the ability that makes the power useful; and the lawyers and statesmen are the governors and fly-wheels. So far as they see that justice is done, that taxes are wise and government good, they keep things running easily and smoothly—the power from being wasted, and the machines from going too slow, or so fast as to tear themselves to pieces.

123. ^{Comparative} ~~Profits in different fields of Ability.~~ There seems to be a general impression, but it is a doubtful one, that business men of ability—who control material things, are as a rule richer than the surgeons, and artists, and lawyers, and statesmen. It is certainly doubtful whether they are, in proportion to their numbers; many doctors and lawyers are rich, but there are a great many *more* men in business, and therefore a great many more rich ones, and of the comparatively few men in the fine arts and the other professions, by no means all have much ability, any more than have men in business.

Whether as a question of causes, or as one of natural justice, there are certainly few questions more interest-

ing than why a few men have most all the ability, and therefore most all the property, while 124. *Why so few have great Ability.* most men have very little of either; and it is but a superficial answer to say that it is probably for the same reason that a few horses have all the speed and beauty: for we do not know the answer much better regarding the horses than regarding the men. The causes are all a question of evolution, not very well worked out yet.

The truths we have been considering about the shares of the various producers, have not long been understood.

125. *Discovery of the foregoing truths.* The bottom ones were first clearly stated in General Walker's "Political Economy", in 1874, and since then they have been followed up and expanded, particularly by Professor Marshall and Mr. Mallock. It used to be believed that what the enterpriser got, he got by having control of the tools and materials, the store, the railroad, the steamboat, and forcing his men to let him keep a part of what they really produced or exchanged.

126. *Ability Increasing.* The Man of Ability is certainly appearing oftener than he used to. A new state of affairs is growing up in England. At last workmen are putting their money together and enterprising their own industries, and are rapidly developing so much ability that they can manage themselves through directors elected by themselves. Of course they cannot all be bosses, but they are capable of directing sufficiently to prevent having to depend entirely on any one or two men; and the rank and file are developing sense enough to help their leaders instead of hindering them, as has been too often the case before.

127. *Suum culque.* That men who are mere machines—who do not economize production, have any just title to profits from economized production—that men who take no part in organization, have any just claim in the profits from organization, are both propositions which, however desirable the advance of such men's lots may be, are too absurd to promote such an advance, or any other good thing. But such descrip-

tions of limited function do not apply accurately to many men, and ought not to apply to any. As already intimated, there is ability in varying amount, among men who are directed by larger ability; and the ability of men under direction can be stimulated and increased. Moreover, it is plain that ability, little or big, should have its little or big share of profits.

128. Minimum wage and sliding scale.

A rough and limited justice in this regard is already reached by wages varying somewhat with the productiveness of employees, but the justice is very rough and very limited. Various schemes have been tried to improve it. Among them have been sliding scales of wages, varying with the profits of the business. A minimum wage (272 d, 276) is of course a necessary feature of this: for the men cannot be expected to have any reserves to fall back upon if the business pays no profits, and moreover, in many such cases, *they* go on producing in their way, and are entitled to their production. If the enterpriser cannot make money out of it, that is his risk—a risk he often takes for the sake of his men, when, in a sense, it is no risk at all, but a dead certainty against him. Nevertheless, in average cases, an enterpriser sets his men to making product, from the expectation that he will make a profit on it, and there can be no question that so far as labor goes into that product, the product belongs to labor, and labor is entitled to the value from it which was commuted as wages. Hence a minimum wage, with an advance varying with profits, is a clearly logical scheme, at least so far as concerns the minimum. As concerns the advance, it is logical so far as profits are contributed to by advanced energy, carefulness and economy on the part of the workmen; but it is not logical so far—and that is the main distance—as the profits depend upon initiative, organizing ability, prophetic sense, study of the market, and financing ability—all on the part of the employer. As soon as a workman shows any appreciable amount of these rare elements of ability, the question of a sliding scale of wages will have brief interest for him: his employers

will be only too glad to use him in some higher place where such questions do not arise, or he will himself be able to put himself there. It would appear, then, that the portion of profits which can reasonably be devoted to a rising scale of wages, beyond the amount to which the wage-earner is entitled anyhow, cannot be a very large one.

129. No lack of opportunity.

In the various schemes for making the whole establishment a vast partnership, it will not do to lose sight of the same principles. As the man of ability is a rare product of Nature, and as any considerable business is fated to destruction without him, and as he *must* provide his weaker brethren with their wages, and bear whatever losses may arise in so doing, whatever profits come out of the concern (and as said before, comparatively few men who essay the task, bring out any) are logically his, except in the small degree that his men may be able to contribute his kind of virtues. The difficulty of their contributing them is not only in the rarity of such virtues, but in some small degree, as business is inevitably organized, in opportunity. But how relatively small that lack of opportunity is, can be realized only by those who, like the writer of these lines, have been for many years anxiously watching among a group of subordinates for the slightest gleam of business capacity, and on finding it, in one man in scores, eagerly setting it to fitting work; and this at least as much from selfish motives as from desire to give another his due chance.

The minimum wage and the small share in profits (and none in losses) being then the best present chance of the man who lacks the ability to rise beyond wage-earning, and that chance being distributed with an approach to uniformity that but very roughly recognizes differences in capacity, what can be done to give the wage-earner a better chance? Whatever can be

130. But few able to embrace it.

done, he will do most of himself. Generally he will do nothing beyond furnishing an equivalent, more or less adequate, for

his wages, and will finish his life as he began it. As the world is now organized, sometimes he will show enough ability to attract the attention of his superiors, and will be welcomed to such higher functions in the establishment as he is able to perform—perhaps its headship. Sometimes he will save his money, and start a little industry of his own. In this he will generally fail, and revert to the ranks. In rare cases he will succeed, and furnish opportunities to make a living to some who cannot make opportunities for themselves. In rarer cases, he will furnish enough such opportunities, and exercise enough capacity in shaping and handling the results, as to make himself rich, whereupon all those for whom he has provided the opportunities, will say that he has got rich by robbing them. Or finally, by becoming a coöoperator, our wage-earner may get the benefit of whatever ability may be in him, and may rise without incurring jealousy. But success in *producing* has so far attended very few coöperative experiments before they had ceased to be coöperative, and had come under the ownership of men of ability. Yet more men of ability appear to be developing from the ranks, and the ability of the ranks themselves seems increasing.

As to the question of natural justice already alluded to—does it seem right that because one man is born very able, and another, who may be a better man at heart, is not very able, the first should be prosperous, and the second poor? That depends upon what we mean by "right", and that again depends upon what we are using the word for. If we are using it for our hands, the right hand is the one most people can use best; if we are talking about a right line, it means one that goes direct from point to point; if a clergyman speaks of a right action, he means such a one as his church would approve; a lawyer means by a right, something that the government, or the law, will or should secure to a man; and a philosopher would mean, an act for the greatest good of the greatest number, or he might mean an act in

131. Is inequality
of fortune right?

accord with Nature's laws. The fortunes of Peabody, Cooper, Vanderbilt and Stewart are certainly in accord with Nature's laws, and therefore in this sense must be "right". As to the greatest good of the greatest number, probably few would question regarding Peabody's and Cooper's; and certainly Vanderbilt's and Stewart's resulted from work which "the greatest number" could well afford to pay the fortunes for, if they had had to. But they did not have to: for, as we have seen, the fortunes would not have existed but for the savings effected for the community, part of which savings made the fortunes of the enterprisers.

Admitting, then, that wealth honestly acquired is right, especially when used as Peabody and Cooper used theirs, is the corresponding poverty right too?

Well, if "corresponding poverty" means that the majority of mankind is poor *because* the minority is rich, there is no "corresponding poverty": men of ability while making their own fortunes, improve those of their employees and of the whole community, instead of diminishing them.

We often find things in accord with Nature's laws that seem *not* for the greatest good of the greatest number, but even to our finite vision, investigation generally shows that they only seem so.

132. Evils have their uses. True, Nature is a hard mother to the ineffective man. She starves him, freezes him, often kills him, unless the effective man guides him or saves him by charity. She fills the world with beauty and opportunity; but so far, she has evolved few who care for the beauty, and fewer still who can seize the opportunity. Harder still, perhaps, she even takes away from the ineffective man most of anything he may have, and passes it around, unless it is wasted, until it reaches the hands of the effective man. Truer words were never spoken than: "Unto every one that hath, shall be given, and he shall have abundance; but from him that hath not, shall be taken away even that which he hath."

And yet Nature, by her very hardness, through forcing

her children to help themselves and depend for help on each other, has evolved from the ineffective merciless savage, the effective sympathetic man; and through him she is indirectly showing to her less favored children the mercy that she does not show directly.

Poverty and disease exist only because Nature (including the man she has evolved) has not yet worked entirely beyond them. Nevertheless, great numbers of people have vowed not to help in the improvement, but to be poor all their lives, because they thought it for their own good, and for the good of their fellow men; and some of them have even gone so far as to try to make themselves sick by fasting and vigils. We can hardly assume that there was not any truth whatever in their ideas. But good people often do very foolish things because they get too enthusiastic over one part of the truth. The part here is that poverty and sickness, being natural, must have *some* good resulting from them, but the good is in overcoming them, not in seeking them, as the ascetics used to. Some of the noblest efforts and wisest discoveries and greatest advances of the race have been made in *overcoming* poverty and sickness. In fact, the history of civilization has been an overcoming of disadvantages. Most of the intelligence and morality of mankind have grown up through conquering the hard conditions of Nature. All early men were savages, man has become civilized only through the conquests he has made. Through overcoming Nature's difficulties, he has become brave and strong; through hard study of her secrets, he has become wise; and through helping others who would not have needed help if there were no poverty or sickness, he has become benevolent.

Poverty and sickness, then, do tend to develop usefulness, tho most modern men prefer to have their usefulness arise from different experiences, even at the cost of disagreeing with the early saints.

CHAPTER IX.

PROPERTY AS CAPITAL.

The sources of property rights we have so far considered, are Land (including, of course, its rent), the wages of ordinary Labor, and the profits of Ability.

That government should protect all those property rights—in rent, wages and profits, is a matter-of-course too simple to discuss.

Equally of course, that government should protect any one honest dollar of rent, wages or profits more than any other honest one, would be absurd. If a laborer does not use up all his wages, that it should be government's duty to protect his rights in only the portion which he uses up, would be an idea twice as absurd as the other. And yet many people unconsciously entertain that idea. Of course if government should protect a man's enjoyment of his wages, it should protect his enjoyment of his savings.

133. As much entitled to government's protection as wages.

If, instead of wasting his surplus wages in expensive food or drink, or unnecessarily fine clothes, he sees fit to save them and add to the permanent wealth of the community in the shape of, say, an addition to his house, or to add to the amount of cultivated land by a garden, it is plainly government's duty to protect his rights in them. To support the contrary would be even more ridiculous than to support either of the previous suppositions.

If then, instead of enjoying his savings himself by, say, adding to his house or garden, he sees fit to provide

employment for other laborers, say by building a little factory and stocking it with tools, to doubt that government should equally protect his rights in that, would be the most ridiculous of all.

Supposing, then, that instead of stopping at saving enough to build a little factory, he were in time to save enough to build a big one, or even a railroad, it is self-evident that government should protect his rights in that too. To question it would be to say that government should protect a man while he is being of comparatively moderate usefulness, but should desert him as soon as he begins to be of great usefulness.

Now we have just been going over the ground through which most rich men have become rich. The men who are constantly grumbling that the "poor man stands no chance" keep their eyes tight shut to the plain fact that the vast majority of rich men started poor, and got rich by the ways we have been describing. Not one in ten of them inherited his money, and when he did, his father generally began poor, and got it in the ways described.

**134. A man who
can use money
can hire it.**

Yet they seldom saved all they made use of. As soon as a man shows that he has the ability to make, save and use a little money, other people who have saved are glad to lend him more. Money seeks just such investments.

Money thus saved, and employed in the instruments of production, is called Capital.

**135. What capital
consists in.**

The usual forms of capital are land—where used for a farm, mine, factory, store, railroad, or anything else that produces or saves wealth; all tools used in production—including machinery, vehicles and animals; all stocks of goods for sale; and all wages and other expenses to keep the industry going before the product is sold.

We first named the essentials of modern industry as Labor, Ability and Land. But as we have gone on, we have indicated many things besides land—such as

buildings, raw material and machinery, as equally essential. Yet altho those things eventually depend on the land, it is much handier to group it with them under the name of Capital.

If capital is in land, it gets its returns in Rent. Even if a man works his land himself, what he gets more than the equivalent of wages, can fairly be called rent. If

136. Rent. an enterpriser hires tools, what he pays for them is often called rent. If instead of hiring tools or land, he goes to a man whose savings are in money, and hires that, in order that he may buy land and tools to give workmen employment, the name given to what he pays for the use of the money depends upon whether he turns over a share of his profits, whatever they may be, or pays a fixed price.

137. Interest. If he pays a fixed amount for each dollar and each day's use of it, he pays interest.

There is no reason why, if a man keeps his savings ready to hire to others in the shape of money, he should not get paid for the use of them, just as he is paid for the use of them if he puts them into land or tools. To deny a man's right to interest on his money is as absurd as to deny his right to rent for his land, or hire for his horse or boat or tools. Yet the world long held the opposite opinion. But the world has had to outgrow a great many foolish opinions, and will have to outgrow a great many more.

138. Usury. In the good old times when people were even more foolish than they are now, all interest on money was called usury, and the taking of usury was considered wrong, and it sometimes is still. But only interest above the legal rate is called usury now, and there is not even a legal rate everywhere.

In some places people can agree on what rate they please, but the law generally provides a rate that shall apply to a debt in dispute or otherwise delayed, until it is settled. Yet in places where the law fixes a rate which can never legally be exceeded, such laws are not generally observed. They are simply ridiculous survivals of the old

superstitions that prevailed before people knew much about money.

About the end of the nineteenth century, public opinion in New York had grown sufficiently enlightened for the passage of the following law regarding Interest. It leaves many, perhaps most, of the large transactions subject to the law of supply and demand, while it continues the alleged but illusive paternal policy of protecting the man not up to large transactions.

"The legal rate is six per cent. A corporation cannot plead usury as a defence. The taking or agreeing to take any greater sum renders the contract or obligation void, except in bottomry and respondentia bonds and contracts. For advance of money of not less than five thousand dollars, payable on demand, made upon warehouse receipts, bills of lading, certificates of stock and of deposits, bills of exchange, bonds, or other negotiable instruments, pledged as collateral security for such repayment, it shall be lawful to receive, or to contract to receive and collect, as compensation for making such advances, any sum to be agreed upon in writing by the parties to such transaction."

Tho the legal rate in New York is six per cent., the actual rate in Wall Street is generally from two to four per cent., but sometimes, for a short pinch, from one hundred to two hundred per cent. The law, in New York for instance, (except as modified above,) nominally punishes taking more than the legal rate, by canceling the debt; but practically does not punish at all. The most law-abiding citizens do not call upon the law, though it would enable them to get rid of their debts: for if anybody did, he would not have to pay back the money borrowed. But a man's promise to pay is a more sacred thing than a worn-out law, and a man who acted to the contrary would find it hard to borrow the next time he might be in need.

A large part of the world has already acted more freely than New York upon these opinions about the ^{138 (b). Disappear-} absurdity of usury laws. In England _{ing from enlight-ened communities.} there has not been a usury law for over thirty years, and in our more progressive states, people can contract for any rate they please,

without collateral, tho a legal rate is always provided in case money lying in dispute is ultimately recovered.

The useless and ridiculous law is kept on some of our statute-books, however, because the majority of voters are too stupid to get trusted with much money, or know much about money, and they have an idea that a legal rate of interest enables them, if they can borrow at all, to borrow lower than they otherwise could.

138 (c). Hard on borrowers. The fact is quite the reverse: they generally have to pay more than the market rate, in order to compensate the lender for

the risk of their appealing to the law to release them from paying back. The best opinion now is that usury laws are a disadvantage to everybody, and to the poor man most of all. The poor man *nearly always* has to pay the legal rate, while the rich man may not be paying a quarter as much; and when the man in good credit can get all he wants at the legal rate or below, it is generally impossible for even the *deserving* poor man to get it below the legal rate, and often impossible for him to borrow at all. If there were no usury laws, he would generally be able to get money at somewhere near the market price.

Yet in backward and ignorant countries, clever usurers sometimes despoil the stupid people frightfully. Such people might be better off if paternal governments would give them usury laws. But a people professing (rightly or wrongly) the ability to govern themselves, should in consistency profess to be able to make their own contracts.

139. Needs for associating Capital.

Now let us take up a new phase of capital. We have seen (100, 103) that for the community to get the benefit of "the great industry" through cheapened product, it is necessary to do things on a very large scale, and there are some things that it is not worth while to do at all unless they are done on a very large scale—railroads and steamships, for instance. If each man in the civilized world who is rich enough, were to build a railroad

or a steamship or a great factory or some other great convenience, there are probably not half enough rich men to give us all the railroads and steamships and similar great enterprises that are needed. Even if there were enough rich men, it would not be wise for one to put his whole fortune into making one or two such things: it is never wise to put all the eggs in one basket. In fact, there are some very important enterprises, such as new inventions and mines and explorations, and other uncertain things, into which it is very unwise for anybody to put more than he can afford to lose.

The capital is generally obtained for enterprises too large or too uncertain to be undertaken by one man, or by a partnership of two or three, by a great number 140. *Incorporations.* of people—sometimes thousands, putting their money together, and electing some of their number to manage the enterprise. Judge Baldwin * says that probably four fifths of the business capital and of the industry of the country are now represented in such associations.

But, it may be asked: if a hundred men combine to do a business, how would anybody want to trust them, when to collect, say, a hundred dollars, he might have to sue a hundred men for a dollar apiece? The law has met this difficulty by providing that, under proper circumstances, a number of persons may be incorporated into one fictitious person called a Corporation, and that the corporation may be sued, or may sue, or do business in almost any way, just as if it were a single person.

140 (a). *As affecting liability.* Moreover, if men go into business together as partners, no matter if each puts in only a tenth of what he has, any one of them can run the firm into debt so that all might have to pay out all that they have, and this while all are attending to the business themselves every day. Therefore, if an enterprise were proposed to be owned by a thousand partners whose interests do not average more than a

* "Modern Political Problems."

thousand dollars apiece, apparently nobody would be foolish enough to take an interest, when any one of the thousand partners might run the concern into debt so as to use up the whole fortune of any of the others. Yet people have often been just that foolish. A very conspicuous case is that of the Glasgow Bank which failed in the seventies: partners who were not interested more than a hundred or two dollars—some of them women and old people and children, were deprived of that and of all their other means of support, to pay the bank's debts.

After such experiences, people take the risk of these big enterprises only because laws have been made that the members of corporations observing certain rules to protect the public against bad management, shall not be liable for the debts of the corporations beyond the amounts they have invested.

140 (b). Perpetuity. In a partnership, if a partner dies, the partnership usually comes to an end; and (unless careful arrangements have been made to the contrary) the business must be sold, even if it is bought in by the other partners and the family of the deceased. But if there are a thousand people in a corporation, it is not necessary to sell the whole thing out whenever any one of them dies. The law provides that corporations shall not come to an end when one of the contributors dies, but that his share shall go on, without being entirely separated from the rest, to those who inherit from him.

140 (c). Stocks and bonds. When there are numbers of subscribers, the shares are kept track of by entering all the subscriptions in a book, and issuing for them numbered certificates, called shares of stock, generally one share for each hundred dollars subscribed.

Preferred stock is a separate portion of the total stock, which shall be entitled to a certain amount of the divided profits (dividends) before any are paid on the remaining, or "common", stock. Sometimes the dividends on preferred stock are "cumulative"—that is: before any dividends can be paid on common stock,

payment must be made for any deficiencies of previous years below the rate prescribed for the preferred stock.

When a corporation wishes to borrow for a considerable time, it generally executes a mortgage (83) to some one party, who sells out the claim secured by the mortgage, in portions generally varying from fifty dollars to one thousand dollars, according to circumstances. These portions are expressed in documents under seal (82 d) which are called bonds (83 a), and are sold to anybody who wants them. Many of ours have been bought by Europeans: in other words, the Europeans have lent us a great deal of money.

The chief differences between stocks and bonds are: (I) a certificate of stock declares that the holder is part owner of property, while a bond declares that the holder *owns a claim against* a property, which claim is fixed in amount, and must be satisfied before the owners of the property can benefit from the property; (II) bonds have a steadier value than stocks. A piece of property need not pay more than a hundred cents on the dollar upon any bonds it may be liable for, and it *must* pay that much if it can, and it generally can: for people are not apt to take bonds on a piece of property for more than a part of what it is worth. But if it turns out to be worth barely the amount of its bonds, the stockholders get nothing. On the other hand, if an enterprise is enormously successful, the bondholders get only the amount of their bonds, and the stockholders get all the rest.

Stocks and bonds are both, in effect, claims against property, either real or personal, tho the law regards both the stocks and bonds themselves as personal property.

People sell stocks and bonds just as they do any other value, and the places where those of the most prominent companies are bought and sold are called stock-exchanges.

The prices of stocks at the exchanges become guides in settling many civic questions. When business is expected to be good, the prices of stocks are high,

because the enterprises they represent are expected to divide good profits—pay good dividends. Therefore when a great question like a political campaign or a war is before the people, the prospects of one side or the other will affect the price of stocks. So when a rise in stocks generally attends the good prospects of one side, that must be the side which makes for safety of property, activity of business, and high wages.

But by no means all the stocks and bonds of corporations are dealt in at the stock-exchanges. Only those which the managers of the exchanges think of enough importance—probably not one in ten thousand—are put on their lists.

The small corporations are unfavorably affecting the craving for land that some philosophers think the wisest of all economic desires. Laborers are not trying to own their own homes as they used to, but are putting their savings more into all sorts of incorporated enterprises.

To sum up: the principal benefits conferred on the community by corporations, are that they make it possible to cheapen product by the fullest development of "the great industry", to carry on enterprises too great or too uncertain for private capital, and to secure interests in business for the benefit of the owners' heirs.

Another advantage is that their stocks and bonds are often good investments. Yet while many are, many more, perhaps, are not. The bonds of the successful ones are very convenient investments for people who have a little more money than they want to put in a savings-bank, but have not money enough to buy a piece of land worth taking care of, or a mortgage on one. Those sold on the exchanges are also good investments for funds that the owner may want to use at short notice, which is a consideration of vastly more importance than is generally realized. Sometimes even rich men get into trouble because their wealth is in property that cannot readily be sold.

There never was a greater mistake than the very current one that the bonds and stocks of the corporations are all owned

141. Large corporations not all owned by the rich.

by rich people. The general course of the money of people of moderate means, unless they have it invested in their own homes and shops, or building and loan associations, is something like this: a great deal of it goes directly into the bonds or stocks of corporations, and much goes into the savings-banks; the savings-banks gather up the little deposits and lend them out in large amounts, sometimes on the bonds of corporations, but generally on mortgages on land; and the sums thus borrowed are very largely invested by the rich in the corporate enterprises which they organize. So the fact is that, at bottom, the corporations are really largely owned by people of very moderate means—especially by widows and orphans who cannot go into business or manage real estate.

142. Irresponsibility of corporations.

So much for the advantages of corporations; now there are elements of disadvantage. The chief one is that, as the liability of shareholders is limited, and as, in the large corporations, it is an impossibility for many shareholders to keep close oversight, there is great danger of reckless and selfish management. This danger also weakens the credit of the smaller corporations.

143. Very small corporations undesirable.

There are too many unimportant little corporations, not only because of the advantages over partnership already explained, but also because some time ago people thought it made a business look big to call it a company. But that has been overdone: the financial irresponsibility of the very small corporations generally makes them a nuisance; especially as many are started for the express purpose of defrauding by the pretentious name of a "company", and without personal liability beyond the stock owned. The privilege of incorporation should not be given below a considerable amount of capital. The evil might be apt to correct itself, however, through the growing unwillingness of people to trust them, if the gull-crop did not seem inexhaustible.

144. Why Labor
hates corporations.

Labor generally regards corporations with extreme disfavor. As corporations do not die, and generally consist of so many people that they are very unlike a single human being, it has become a proverb that "corporations have no souls". Moreover, as corporations run most of the very large industries, they are always most prominent in the great labor struggles, and therefore many people have come to dislike them, and the tendency is to tax them unduly. Another reason why they are over-taxed is that in order to limit their liability, they have to publish some of their accounts, so that people will know how far to trust them; and the tax-collectors are thus better able, as they are generally disposed, to tax them for all they are worth. They cannot do this as readily to private concerns that do not have to publish their affairs.

This unfriendly attitude toward corporations, is to be deplored when it extends to corporations conducted fairly: and those large enough to cheapen production through "the great industry" generally are. So far as they are unjustly interfered with, their ability to cheapen things is impaired.

145. Danger of
Monopoly.

There is danger in their being very large, because they are apt to become so great as to run into monopolies. The word monopoly comes from two Greek words meaning "one" and "to sell", and it means anything which has only one owner to sell. He of course can ask what he pleases, and so long as people will buy, his price is not limited at all by the cost of production.

Until Parliament passed the statute against monopolies in 1624, they had been largely given to royal favorites. American courts have always held them illegal except for franchises for the public benefit, which can fairly be considered to include patents and copyrights, and both of these are specially sanctioned by the Constitution of the United States.

CHAPTER X.

COMPETITION, MONOPOLY AND INDUSTRIAL AND LABOR TRUSTS.

146. Rights of
and to competi-
tion.

The objection to a monopoly is that it deprives the public of its rights to Competition.

There are two principal rights regarding competition. They might be called the right *of* Competition, and the right *to* Competition. Each individual has the right of competition—the right of competing with other individuals; and the community has the right *to* competition—to the reasonable prices and improved qualities of goods and service that competition brings.

The right of individuals to compete, is not a right that all are eager to claim. Lazy people do not want to com-

pete, or rather do not want to have anybody compete with them; they hate the very

147. Hated by the
lazy and stupid.
name of competition, and want the state to try to abolish it, because it forces them to work harder; and incapable people hate it because it drives them to the wall. Yet if they were wise enough to look at the question as consumers, they would see the whole active and able world competing to make things better and cheaper and more various for them.

To illustrate the benefits of competition, suppose that, in a primitive community, milk is taken around in goat-

148. Benefits illus-
trated.
(a). In domestic
convenience,
skin bags. If somebody comes along with a tin can, everybody will get milk from him until the other dealers get tin cans. Then, suppose somebody else brings it nicely measured in bottles with spring stoppers, instead of

slopping it into each customer's pitcher amid the dust and heat of the street; pretty soon everybody will take from the bottle man until all dealers supply bottles. In this way competition will have supplied the community with good milk in neat bottles, instead of milk apt to sour; from goat-skin bags. But if the early dealer had kept a monopoly, the people would still be getting it from goat-skins. To carry the illustration a step farther: in some parts of the country, the milkman sits in his cart and yells or rings a bell, for the customer to come out to him; in the other regions, where competition is lively, he jumps out himself and carries the milk in.

148 (b). In travel. To illustrate competition in means of travel: there, as in everything else, new methods are constantly driving out old. The railway competed with the turnpike road; steam, the cable car, the trolley and the automobile are competing with the horse; and the bicycle competes with mere walking.

148 (c). In commercial travelling. Perhaps the greatest revolution effected by competition in recent times, is the system of commercial traveling. A generation ago every considerable dealer outside of the great cities had to go to them at least once or twice a year to find out what was going on in his line, and to buy a large stock of goods; now nearly everything is brought to him by samples. Moreover, as the travelers are constantly coming to him, he need not carry nearly as large a stock of any particular thing, and can therefore have a variety vastly greater and much fresher, and up to the latest improvements. Farther: in old times when the country merchants went to the cities on their regular buying expeditions, they were very apt to get led astray, and leave a good deal of money that they brought home nothing to show for. Under the new system, if they go to the cities as often as they did before, they certainly do not stay as long at a time.

The army of commercial travelers with which competition has crowded the country, costs a great deal more than the old system of dealers going to the cities.

But it costs not nearly as much in proportion to the amount of goods exchanged: the risk of unsalable stock is so much lessened, and the chance of getting the best and freshest thing for the money is so much increased. And all this has made it possible to supply more things and newer kinds of things for the same money. That has made new manufacturing industries possible, and increased the demand for labor, and the supply of conveniences, in very many ways.

In addition to the more direct benefits of this system of competition, commercial travelers have improved traveling facilities in general. They enable the railroads to give better and wider service than they otherwise could, and they have also led to a great improvement in the country hotels. After the stage-coaches went out, and before the commercial travelers came in, the country hotels got into a very bad way.

148 (d). In regulation of prices through Demand and Supply. Competition greatly promotes the steadiness of business. It regulates prices, and makes their rise and fall so gradual that people can make some preparation for either: when goods begin to be abundant, sellers begin to compete by lowering prices; and when goods are becoming scarce, buyers begin to compete by offering higher prices. To put it in more scientific terms: prices are regulated by demand and supply. Prices are steady when the demand for goods or labor is just equal to keeping them in use at the prices asked. That equality is technically called the Equation of Demand and Supply. When the equation is disturbed by increase of supply, competition in lowering prices increases demand until demand and supply are again equal. When the equation is disturbed by increased demand, competition bids up prices and chokes off demand until demand and supply are equal.

148 (e). Minor exceptions. That "Competition is the life of trade", is an old proverb: it is of great benefit in keeping business active, and men at work.

Yet it may not be quite fair to say that rise in prices is always started by the demand of competing buyers.

It always is in the great auction exchanges for stocks, produce and real estate, where probably most of the world's business is done. Tho of course private dealers do not merely mark up prices of staples to follow the great exchanges, but mark them up also on other articles when they find their stocks running short.

149. Evils In competition.

Every good thing can be carried to an extreme, or used in a harmful way—in fact, some people think that all evil tendencies are merely good ones misused: accordingly, competition is sometimes harmful. It is often called harmful in driving out of business men who lack ability. But that is not harmful, even to the man himself: if an unable man tries to conduct business, he is always keeping his customers waiting, making mistakes, unable to furnish good goods, or any goods at moderate prices (except as his bankrupt stock ultimately gets into the bargain-stores); and he is under constant temptation to cover up his incapacity by dishonesty. His custom goes, of course, to more able men. Yet there ought to be a place in the world for a man whom Nature has not blessed with business ability: some of the best of men have lacked it. And there is a place for him under the guidance of the man who has ability; and the man without it is much better off there, than in stumbling along by himself, if he only has the sense to know it; and the community is vastly better off for his being there.

149 (a). Suppressing Incapacity not among them.

The notion has arisen that competition is a cause of poverty, because every man who is not conducting business himself, and sees rich men conducting it, thinks that if he were conducting business, he would be rich too. Every mechanic in the shop blames competition for preventing his being boss; whereas if he were, in the vast majority of cases, he would soon be bankrupt and poorer than he is, and the rest of the men thrown out of employment. The minority who are really able enough to be bosses, are not many of them prevented by competition from

becoming bosses. They generally do it in good time.

149 (a). But waste-fulness is. Yet competition is very often wasteful,

and as long as there are foolish men, it very often will be. But as to its driving a man out of business, that is not usually because of waste (unless it is his own waste), but because another man can make a profit by supplying the community at rates lower than the first man is able enough to. But nevertheless, there are plenty of instances of competition being carried to the point of waste on both sides—for instance, where advertising or drumming (both excellent things within limits) is carried to excess, or when a man has or thinks he has more money than his competitor, and does business at a loss so as to get the other's customers away, expecting to make up his losses after his competitor is driven out of business. In this way, before people learned better, the steamboats in the West and Southwest sometimes carried passengers for nothing, and even threw in their meals. True, the public got the

150. Public seldom gains by wasteful competition. benefit of the competition, but only for a time. After one party was driven out,

and the monopoly held by the other, the monopolist could put prices where he pleased. Such business is not really competition, but an effort to kill off competition. Legitimate competition is really economical.

But leaving out of consideration persons who are ruined by wasteful competition, if the public has been accommodated at extra-low prices, they might be no worse off if for a time they have to pay extra-high ones, were it not that they must pay them long enough to make up for the waste, and pay a profit on it. Moreover, unsteady prices unsettle business: nobody knows what to count on; and prices lower than they ought to be, get people into wasteful ways that do not stop when prices get normal again.

151. Cooperation and competition. One is tempted to believe that the whole community would be vastly better off in wealth and peacefulness if competition could be replaced by cooperation—if instead of all struggling

against each other, we were all helping each other. But on considering how it is to come about, one is, as usual when venturing very far beyond experience, mired in a tangle of paradoxes. Competition consists largely in the lowering of prices. This, instead of proving competition a bane, shows it to be for the benefit of the public. But on the other hand, we have seen that as regards the competitors, competition is often attended with great waste in drumming, advertising and ruinously low prices. Suppose then that the men in a particular trade get together and agree that they could make more by helping each other than by fighting each other; and so make elaborate agreements to regulate prices and limit advertising and drumming, or combine all their businesses under the regulation of a few of the principals.

This has been done in the trusts. But 152. Capital trusts. while, under them, the members of the trade get the benefit of coöperation, the public loses the benefit of competition. Here is our paradox: apparently we could benefit by helping each other, but as soon as we try it in the business world, somebody gets hurt. Yet it is true that with less "human nature", the trusts could both lower prices and increase profits. Even as matters are, it is by no means certain that they do not. It is very certain that during the phenomenal advance of prices in America in the first half-dozen years of the twentieth century, oil, the most trust-guarded of all commodities, advanced among the least. But advances, whatever they may be, do not negative the fact that with less "human nature", trust-economized goods would be the cheapest, and would prove coöperation better than competition. So we can keep on hoping for a co-operative world, but it is destruction to try to realize it any faster than human nature makes the realization practicable.

Mr. Bellamy expounded the notion of the benign trust in one commodity, into a benign trust in all, its functions to be conducted by the state. The benefits that he imagined from such a system were so great

that he pictured the average family as living, instead of at the present average of six or seven hundred dollars a year, at an average of some thirty thousand. The benign trust alone is probably far beyond the range of human vision; farther still is the degree of political capacity essential to the public administration of one; farther still, the political capacity to administer all; and when, if ever, these remote ideals have been realized, they will need to be reinforced by human control of natural forces, to a degree that still farther staggers imagination, before the good things of this life can be multiplied the fifty-fold that many dreamers fancy would result from an even distribution of the present product.

But to come back to the world we know. A trust, if properly conducted, not only does away with wasteful competition, but it has more of the advantages of "the great industry" than smaller individual businesses could have: it is getting to be an old story that the large production is the cheap production.

152 (a). Their economy. Moreover, the trusts save expenses by using fewer managers, clerks and buildings, as well as by diminishing traveling and advertising. Where the businesses to be united in the trust are conducted separately, many of these items are unnecessarily duplicated. The trusts are said to have dispensed with 150,000 commercial travelers from '97 to '99, leaving these men to go into industries supplying new comforts and luxuries, or old ones cheaper.

But that economy is effected by driving people out of work. That certainly is a benefit to the consumer, if the trust gives him part of the saving, tho it is not at the moment a benefit to the people driven out of work. But new demands for labor are created by the money saved through cheapened production: therefore people thrown out of work to save that money, will soon be at work again (331), and also benefiting, as consumers, by the cheapened production; and the drummers will soon be drumming again for new bene-

fits to the community,* or conferring them in other ways.

If trusts do away with wasteful competition by crushing out establishments that do not join them, there are two sides to the question. Of course having so much capital, and being able to produce so low under the great industry, if it is their interest to keep prices low enough, the trusts can run destructive opposition to individuals: but on the other hand, after they have driven off competition, they may get prices so high as to encourage individual concerns to enter the business.

As a matter of fact, these considerations have often kept the profits of monopolies within bounds. The weight of intelligent opinion is that but a small relative proportion of the great fortunes has been made in monopolized industries, but that most have been made in industries open to anybody with the ability to conduct them.

The Census returns for 1900 declare that 152 (b). *Not generally profitable.* of various "trusts" or similar combinations, one-third paid no dividends, and another third paid dividends only on their preferred stock (140 c). Notwithstanding the advantages hoped for by combination, the stocks of most trusts are, thus far, held in very low esteem. This is largely because enormous amounts of them were issued in excess of the actual values of the properties combined in the trusts: in the whiskey trust, for instance, about sevenfold. A very large share of these excessive issues of stock often went to bankers, lawyers, and other promoters, for their services in effecting combinations. The great business depression of 1903-4 was largely due to people who supposed themselves rich in these stocks, having spent more money than the stocks turned out to be worth.

On the other hand, some of the trusts, especially the

* The landlord of a favorite drummers' hotel told the author late in 1900 that he had not noticed any difference in the aggregate amount of commercial travel, despite the 150,000 men said to have been thrown out by the formation of the trusts.

older ones whose stock was not so much watered, have been enormously profitable.

The portion of the total output of their respective industries which has been controlled by the trusts, has varied between sixty and ninety per cent. The control of even sixty per cent. enables a combination to regulate prices pretty effectually.

Probably the best brief summary of this important topic is contained in Professor Seager's "Economics."

152 (c). Their monopoly sometimes causes its own cure, Inordinate prices in a trust are sighted for two reasons: first, the most profit-

itable business must generally be done at prices low enough to enlarge custom; and second, the only policy that justifies the existence of a trust, is the use of its great facilities to serve the public at prices that defy competition from smaller concerns. If that is hard on smaller concerns, they can join the trust, or go into some business to supply new conveniences or cheapen old ones. Where it is a question of the public being served well and cheaply, it will not do to be tender about the interests of an individual.

It is not meant from all this to intimate that, in virtue of preventing wasteful competition between their members, and producing by cheap processes, the trusts are an unmixed good. As already said, they are in

152 (d). and sometimes does not. danger of becoming monopolies, just as is an individual competitor choking off another: and moreover, if there is no com-

petitor to force the trusts to keep low prices, they are sometimes unwise enough to keep *all* the economies of "the great industry" for their own benefit until they find that course suicidal.

But, it may be asked, has not a man a right to set his own price on his own property? If not, what becomes of property rights? If one man or one corporation or one trust has wealth enough to drive out weak competitors and get hold of the entire supply of any commodity or facility, is it not fair that people who want it should pay the holder's price? Perhaps

they should if they let a monopoly get the control, but that is just what they should not do.

Moreover, a man has *not* always a right to set his own price on his own property: a man having a monopoly

^{153. Property rights do not always include monopoly rights.} of plenty of food has no right to demand a starving man's fortune for enough food to save him. There is a limit, then, to

property rights. As we have already agreed more than once, there is a limit to *all* rights—there is to everything we can conceive of, for that matter: the state has a right, whenever the greatest good of the greatest number requires it, to take a man's property or labor at a fair price, or even his life at no price at all, tho it usually pensions a dependent survivor. The state, then, might properly take an unjust monopoly's goods by eminent domain, and sell them to the people at reasonable prices. But

^{154. State Control.} while the principle is right, the way around is long. It would be simpler for the state to compel the monopoly to sell at reasonable prices, or better still, wherever the state can, to encourage competition. Laws have been enacted regulating prices of such monopolies as railroads, water companies, etc., and there are also two classes of what are generally called anti-trust laws—one class providing that persons conspiring to unduly raise the price of goods, shall be liable to the same penalties as persons conspiring to defraud; the other, that corporations so acting shall lose their charters, and trusts so acting shall be dissolved. Perhaps these laws are yet too new to show whether there is much good in them. So far, they have been found very hard to enforce: partly because it is very hard to get evidence that will fasten the guilt where it belongs.

^{154 (a). By Anti-Trust Laws.}

Monopolies are against the common law, and in 1890 the United States Congress (as many state legislatures have done before and since) reinforced the common law by a statute. The following remarks on it in the *Times* of April 13, 1903, throw much light on the subject—not the least, on the diffi-

culty of getting advantages out of such laws. The statute declared

"contracts and combinations in restraint of trade or commerce among the states to be unlawful. . . . Nobody had any idea, not even its framers, that it would be used against the railroads. . . . Up to the end of the year 1901 there had been twenty-three suits brought by the government under that Act. Only four of these actions attracted general public attention. The Knight case against the Sugar Trust resulted in the defeat of the government, the Supreme Court holding that production was not commerce. The Trans-Missouri Freight Association and the Joint Traffic Association were actual combinations to fix rates, and the Supreme Court declared them unlawful. In the Addyston Pipe and Steel Company case, a particularly vicious conspiracy in restraint of trade was broken up by the judgment and decree of the court. Taking the twenty-three government suits together, the government has lost eleven outright, has accomplished nothing in two, and has won ten. Of the ten, four are against labor unions and strikers. Of the remaining six, four are the suits above mentioned. Three other suits, that against the Northern Securities just decided, the suit against the Beef Trust, and the suit against the Federal Salt Company, have been brought since the beginning of the year 1902. This makes twenty-six suits in thirteen years—two a year. No wonder the agitators proclaimed that the law was a dead letter . . . the anti-trust law has been fished up from its condition of noxious or innocuous desuetude, under which actions were brought at the rate of two a year, to be made to-day the most conspicuous statute in the land. . . . It is to be added, however—and the consideration is an important one—that President Roosevelt's provocations have far exceeded those to which his predecessors were subjected. The Northern Securities combination was quite the most flagrant, bold and undisguised defiance of the law of 1890 which the country has witnessed. The Beef Trust combination was also one peculiarly offensive to the popular sense of right, a sense somewhat sharpened, no doubt, by the high prices of beef which prevailed a year ago.

"The brilliant success of the proceedings against the Northern Securities Company [a corporation formed to hold the stock of several railroad companies, and so do away with competition between them. The government dissolved the corporation. It is not proved, however, that the result cannot be accomplished in other ways], it is hoped in some quarters and feared in others, will inspire the Administration to an enthusiastic pursuit of other offending corporations. There are plenty of them. Not only the coal-carrying roads, but corporations like the New Haven Road, with its control of the Sound steamboat lines; the Pennsylvania Railroad, which in one way or another

controls the Reading, the New Jersey Central, and the Baltimore and Ohio; the Lake Shore, which controls the "Nickel Plate", and dozens of other railroad systems, small and great, lie open to the assault of the Attorney-General under the exceedingly broad principles of the Northern Securities decision. There is no occasion to prove that they do restrain trade or fix unreasonable rates. The court says that is not the question; and the Supreme Court itself has ruled that the possession of the power to do the unlawful acts is all that it is necessary to prove."

The law has been invoked several times since the quoted editorial was written, especially regarding ice trusts, meat trusts, and railroad rebates, with the punishment of some offenders, and probably the discouragement of some abuses into which, without the law, the trusts both of capital and labor would have ventured. All newspaper readers know the details: so it is hardly worth while to state them here. Moreover, Congress has passed the Railroad Rate Bill, whose efficacy is yet to be tested, and the Meat Inspection Bill.

*154 (b). Capital
Trusts and Labor
Trusts.* While in a case that has come under my knowledge, a number of manufacturers

of exceptional standing were advised by their counsel not to agree on rates and prices, for fear they would be haled into court for violating the anti-trust law, the Sherman Interstate Act, and the Donnelly Act, the members of the trades-unions all over the country are agreeing to keep up prices, without anybody paying any attention to the illegality of it; and all this despite the laboring man's standard claim that he, of all men, is the constant victim of injustice!

So far as monopolies are controlled, as they nearly all are, by corporations, the state has a right to regulate them, because the corporations are made by the state. When the state confers on a corporation the privileges of limited liability, the right to sue and be sued as a unit, and the right of continuous association of property interests in spite of the death of a member, the state has a right, of course, to name the conditions on which it confers the benefits—the duties which must attach to

the rights—and prominent among these conditions, of course, are defences against misuse of monopoly privileges.

154 (c). By fixing prices. Probably the most frequent instance of the state thus making wise conditions, is the regulation of railroad rates—street-car fares in cities, mileage rates on steam roads, and freight rates between points where there are not competing roads. It might be wiser to force the roads to keep their prices down, by setting a limit to the profits they shall divide: for an arbitrary price might be less than they could continue business at. But a danger in limiting profits, is that the roads would prefer to earn them by a small and easy business at high prices, rather than a larger and more difficult business at low prices; whereas, if they are permitted to make all they can, they may often widen business by rates even lower than those which would give them the profit arbitrarily fixed for them. A road might make as much money by running a few trains at a dollar a head, as by running more at seventy-five cents, and prefer the smaller trouble and wear of the few trains at a dollar. Yet it might make a great deal more money by running still more trains at fifty cents, but be restrained because not permitted to earn more than it could at a dollar.

154 (d). By eminent domain. One of the best instances of wise state interference with monopoly abuses, by direct exercise of eminent domain, is at Niagara Falls. The neighborhood used to be one of the plague-spots of the earth—covered with unsightly and ill-arranged structures, and infested by extortionate hackmen and cheating fakirs of all sorts. The state took the land by eminent domain, made a beautiful park of it, and has everything well managed at reasonable prices.

154 (e). Danger of government tyranny. Yet such state interferences may become tyrannical and foolish. Corrupt politicians may interfere to extort blackmail, and at best the state cannot know all sorts of business, and should be very slow to interfere with, or itself conduct, any.

155. Effect of great aggregations of capital on Legislation.

The effect of the great corporations and trusts on legislation is much discussed. They can afford to bribe more than smaller private concerns could, and get all sorts of "protective" laws to shut off foreign competition, so that they can impose upon the public the highest rates the public will pay; and they can often make most money by selling to a few at high prices, and forcing the many to go without. The Sugar Trust is generally believed to have bought three senators of the United States in the Fifty-second Congress, and prevented the passage of a reformed tariff bill which that Congress was specially elected to pass. Tho that Congress did pass a reformed tariff bill, it was a very lame and doubtful one, largely owing to the obstruction of the suspected senators. The reform did not reach the sugar.

156. Socialism as a remedy

It has been urged that we could get rid of the corruption if the state itself ran all the industries—that we could get rid of all the trusts by making the state itself a trust that should include them all, as proposed by Mr. Bellamy; and one argument is that then there would be no one interested to buy votes. But examined, this is simply a claim that it would be better if the politicians were running the industries themselves: so they could vote to favor their pets without being bought—so that instead of having the corruption funds of the corporations and trusts ladled out to them as now, they would hold the ladle themselves. Tho nominally the politicians would be working the industries for the state, and not for themselves, we have seen enough of the way they are apt to "work for the state and not for themselves". Moreover, business will be managed much better if the manager is working for his own benefit, and according to his own ideas, than if he is working for the state, and according to its own ideas—even if there were any way of keeping the state's ideas fixed. But, it is urged, the manager of a corporation or a trust

is not generally working for himself; yet he generally owns a large share, while if his concern belonged to the government, he would not own a millionth part.

157. *The only real remedies.* The only effective policy, then, against the corruption of legislatures by monopolies, seems to be to do our best to see that only incorruptible men are elected to office, to perfect our laws, and to educate people so that there will be more chance of the corporations and trusts being managed by men who will develop the good side for the benefit of the community as well as of themselves. The state must continue to make corporations and permit trusts in some form, while at the same time it must make laws to protect people from them; and it must do this for the same reasons that it encourages the rearing of citizens, when it has to make laws to protect itself against bad ones—corporations and trusts have their good sides just as people have.

Probably the competition in drumming and advertising has done as much as anything else to lead to the formation of the trusts. The success of "publicity" in some businesses peculiarly responsive to it, has recently led to a wasteful mania for it, and extravagant efforts of dealers to outdo each other in it, even regarding things, like books, of inevitably limited demand, and touching which people make up their own minds, more or less under expert advice. Regarding this waste and some others, Professor Cooley indicates a remedial influence outside of the trusts. He says * that competition grows with capital and industrial freedom, and that it declines as intelligence and morality on the part of the buyer grow. These conditions of growth are plain, on a little reflection, but the reasons for decline may justify a little explanation. When a man knows good from bad, and follows the good when he sees it, he will be apt to make up his own mind, and it is therefore a comparative waste to send a drummer or a tempting adver-

* In his remarkable pamphlet on Competition, published by the American Economic Association.

tisement after him. Moreover, and doubly important, if he is an honest man in a position of trust, like that of a commissioner of public works or education, he is not going to choose subordinates or material on account of anybody's "pull".

Another hopeful influence that seems likely to promote the advantages and suppress the disadvantages of competition in the future, is the growing recognition of broad self-interest and of civic responsibility. Already there is here and there a man at the head of a great combination who, like Pullman or Wanamaker, amid all the errors of the struggle, shows some realization that the best profit lies in serving the public well and cheaply, and has some sense of duty to his fellow men.

157 (a). *An Illustration.*

Probably there is justification—double justification as it recalls the bright example of a good man, for a more specific illustration that success is not dependent on the kind of competition that excludes human sympathy. I have the best occasion to know that some forty years ago, a man very young in the publishing business had occasion to call, on some purely commercial matter, on the late Mr. Charles Scribner, the founder of the great house, to whom the young man was barely known by name. As the visitor was about leaving, Mr. Scribner said: "When I see a young man beginning business, it makes me recall my perplexities when I began. It would have been everything to me if I could have taken them to some more experienced man. I should be very glad if you care to bring yours freely to me." There has never been any indication that the great business founded in that spirit is any the worse for it, while the kind suggestion could have brought nothing but good to the "competing" (?) business. Certainly if that spirit actuated all the members of each trade, the world would be a great deal happier—and richer: the money—or let us say the force, of which money is only the index—now wasted in com-

petition, would be saved for making new things or cheapening old ones. But how to bring about that ideal state of affairs? Well, the persons most immediately at hand to begin, are, patient reader, you and I. Of course, in courtesy, I yield you the precedence.

CHAPTER XI.

RIGHTS IN NATURAL MONOPOLIES.

158. Some things
are Inevitably
monopolies.

There is a class of monopolies which must in their very nature remain monopolies, in spite of all we can do.

A street railroad usually remains a monopoly because not more than one can ordinarily be laid in a street. It is generally the same with a city's water-supply and gas-supply, and even its sewerage, connections with which are actually sold in some places. Perhaps, too, it would not be straining language to say that in some industries, the first factory built is a natural monopoly, because while there may be demand enough to support that one, even at a very great profit, there may not be demand enough to justify building another.

And such city works and factories are not the only things which are naturally monopolies. Nearly all roads, bridges and ferries are, and so are natural objects which cannot be duplicated—such as extraordinary mines and springs, and picturesque works of Nature like Niagara and the Yellowstone.

158 (a). But the earth not one of them.
Some people even go so far as to think that there is a natural monopoly a great deal bigger than all the things we have named put together—namely, the entire land of the earth. But it is impossible to see why. Any one piece of land is a monopoly: but so is any one piece of pork, and the land in any single locality may be "cornered", as pork or lumber or wool or anything else may; but land generally, cannot be a monopoly, so long as no one

party owns all of it, and people are competing with each other in selling it, any more than anything else that is generally dealt in can be a monopoly. Yet there are thousands of people, and some of them very good people, who actually think that all the inequalities in the lot of man arise from land being a monopoly, and that the inequalities would be removed if people paid rent to the state instead of to landlords (66).

159. Why Railroads are apt to be monopolies. But to return to things which *are* natural monopolies: between two places there can be several railroads, why then is one apt to be a monopoly? Because the first one laid out is apt to be on the best route, and there is seldom any other route good enough to compete with it. Another prominent reason is that the travel may be enough to pay enormous profits on one road, without being enough to justify building another.

159 (a). Why they need government authorization, A railroad cannot be built without government authority, because in the country, of course nobody can take land for a road without government authority (78), while in a city it would not do to have anybody who felt like it, take possession of a street for a railroad. Some streets would soon be so full of tracks as to be destroyed for other purposes, and few streets would be left free from them. Moreover, as the right to build a railroad is valuable, the city ought to be paid for it **159 (b). and should pay for it.** by those who occupy the streets for the purpose. The right is really a lease of the streets, and generally a salable one.

159 (c). So with other facilities. The rights to supply light, water, etc., and to control most other such things, are in the nature of monopolies, and of course rights to use the streets for such purposes are virtually leases too.

The rights to control these natural monopolies are called **Franchises.**

160 Those in America being generally grabbed by the politicians. While the community can sell franchises to corporations or individuals, in Europe the community generally either uses the franchises itself, or leases them at great

advantage; but in America, until very lately, it has generally let the politicians and their friends make up private corporations and settle down on the franchises without any return whatever to the community. This has been permitted because people are generally too lazy, or too engrossed in their own affairs, or too stupid, to take care of their public rights—because, in short, they lack political ability—which of course includes political virtue, just as (despite a few conspicuous exceptions to the contrary) business ability includes business virtue. If the people had enough political virtue or ability to take care of their own interests, they could manage their franchises through their own officers. Yet it might be just as wise under any circumstances to sell rights to do part of the work, as it is for other corporations to do the same; for instance, the railroads often sell rights to run palace- and dining-cars, and to supply reading-matter on trains.

As a rule, when a community wishes to get a profit from its franchises, it is best not to sell them outright once for all, but to lease them, and only for terms of years:

^{161. Should not be sold outright.} because, as the city grows, the franchises become more fruitful. As an instance of

the value of such rights, the city of Baltimore has unusually good parks, and unusually many of them, which are paid for and kept up by a portion of the receipts of the street railroads. Some other American cities are beginning to get revenues from their street railways and most European cities which do not run their own, derive large revenues from the companies which lease the franchises.

^{162. How natural Monopolies become Personal Property.} Now let us look back of this little discussion of natural monopolies, to see how far we have been justified in treating rights in natural monopolies as rights of property. So far we have been principally concerned in relation to property rights, with their creation by the development of natural resources through manufactures and transportation, and with the determination of what shares of the result should go to the Laborer, the Capitalist and the Enter-

priser. The landlord is of course one of the capitalists. We came to treat monopolies and trusts in these connections, because they are aggregations of capital. It is more than a mere metaphor to regard even natural monopolies in the same way. Railroads, city water-supplies, etc., are plainly aggregations of capital, but each of them is both an artificial and a natural monopoly; a mine is perhaps more distinctly a natural one. And yet as soon as any one of these natural monopolies, or even a natural curiosity or beauty attracting admission-fees, begins to pay income, it becomes capital, and therefore its shares become personal property.

We will consider these matters more at length when we come to Government's Promotion of Convenience. Now let us go on to the Law of Personal Property.

CHAPTER XII.

THE LAW OF RIGHTS IN PERSONAL PROPERTY.

We saw (82) that the ownership of personal property is generally transferred by mere delivery. It is seldom registered, like that of land, because in most cases the

163. Differences between Law of Personal Property and that of Land. perishable and transferable nature of personal property would make registry merely a nuisance; but its ownership is sometimes registered when it passes out

of the owner's possession. For instance, if goods are put in a public warehouse or given to an express or freight company, or money is left on deposit, the article is entered in a book, and a receipt of some kind is generally given.

163 (a). Personal property seldom registered. Bonds are often registered in the owner's name at the office of the company issuing them, and stocks always are, tho upon being issued, they may be endorsed in blank, and pass through many hands before being registered again.

"Endorsed" means literally "on-backed", and usually refers to writing one's name on the back of a paper entitling the writer to some sort of personal property. Endorsing is generally in token that the writer parts with the right to the value stated on the face of the paper, in favor of whoever may thereafter hold the paper, or of some person named in the endorsement.

If the endorsement is in favor of a particular person named, the latter can pass the value on, by himself writing a second endorsement. The principal kinds of papers entitling somebody to receive value, of which

the value is passed on through endorsement, are bank checks, promissory notes, stocks, bonds and warehouse receipts for many kinds of merchandise.

As a rule, if an endorser has prompt legal notice that the signer of the paper fails to make it good, he is responsible that any later holder shall receive what is called for on the face of the paper, but not in the case of stocks and bonds. On them, an endorsement is merely an authorization to the company to register the certificate in a new name.

When an endorser becomes responsible, it is on the theory that he has received an equivalent from the later holder, and therefore is responsible to him for the value for which that equivalent was given; the same theory follows each transfer of the document. But in fact, an endorser does not always receive an equivalent, unless friendship or favor is to be so considered: for men often endorse checks and promissory notes, and make themselves responsible for their payment, to enable their makers to use them where their credit would not otherwise enable them to.

With three exceptions (87), one has a right to take one's property wherever one sees it, if he can do so without violence: otherwise the rule is about the same as in real estate.

If a robber has put property in another person's house, the owner must not break in or fight his way to it. Rather than have the peace disturbed, the law prefers that he should stand still and risk the robber's carrying the property to a place of concealment, on the chances of preventing that in some other way. If somebody goes into the owner's house for it, and has it and refuses to give it up at the owner's demand, it is then the duty of any citizen satisfied that he has stolen it, to arrest him, as it is to arrest anybody he finds committing a crime.

If the robber resists, any citizen arresting is armed with the authority of the law, and can use any force necessary. True, the citizen could not use any force

necessary to drive a man off from his land (81 b), but his being there was not a crime. The citizen has the duty and the power to arrest only in cases of crime—such as murder, arson, burglary or theft.

The exceptions already alluded to, where a person cannot peaceably take his own property wherever he sees it, are, in a sense, not exceptions, but rather

*163 (d). Ownership
of some kinds can
be lost without
neglect.* instances (the only ones) where a thing may peacefully cease to be one's property without one's receiving a satisfactory equivalent, or at least (as in the case of

taxes or eminent domain) one declared satisfactory by the law. These exceptional instances are money and "negotiable paper"—bank checks, promissory notes and bills of exchange. If theft or accident puts one of them in wrong hands, and they transfer it for good value to a holder innocent of any wrong or knowledge of wrong regarding it, the innocent holder can recover its value from all parties who would be liable if it had to come to him regularly. Of course this is hard on honest makers and endorsers of such paper, who lose it, or from whom it is stolen, but it would be harder on the community if all business had to wait for the history of every piece of commercial paper to be investigated, as it has to wait for real-estate titles to be investigated. As a matter of fact, the easy transfer of rights in commercial paper is seldom hard on anybody: for the result of the law is that people take such good care of their paper that it is seldom lost or stolen.

While personal property can be loaned or hired out in an infinite number of ways, ownership of it is not considered as enduring enough to be popularly called an "estate", as in land; yet there can be a life estate in some kinds of personal property, perhaps in any kind, notably in libraries and works of art.

*163 (e). Can be
mortgaged without
registry if in mort-
gagee's possession.* Like land, however, it can be mortgaged. Such a mortgage is called a chattel mortgage, and unless the mortgagee takes possession, the mortgage, like a real-estate

mortgage, is not good against creditors unless it is recorded.

164. Pledge. The difference between a chattel mortgage and a pledge, is that a pledge is always accompanied with possession of the chattel by the person making the loan; a chattel mortgage, if registered, need not be.

There are millions of times as many agreements made regarding personal property as regarding land. for personal property is constantly traded, from the candy-shops to the stock-exchanges, by people who never have any land, and even professional dealers in land have to deal many times as often in personal property. in connection with the ordinary requirements of life

165. Personal property the great field of contract. These facts of course make personal property the great field of Contract: so what time we can give to details of the law of personal property can best be used incidentally to our consideration of Contract.

CHAPTER XIII.

CONTRACT.

As an Element in Civilization.

166. Difference
between Contract
rights and Property
rights.

We have seen that men start with a right to appropriate things from Nature, to labor on them, and to keep the results. But rights to prevent a person taking or holding another's property are merely rights to *prohibit* something. Rights to *demand* something—demand another's things or labor, plainly can arise only by giving or promising something in return.

The modern state protects each party in his right to demand fulfilment from the other.

167. Contract,
agreement, bargain.

The rights arising from such agreements are technically called Rights under Contract. Contract means nearly the same thing as agreement. But etymologically, agreement means something to the satisfaction of both parties, while contract means merely *drawn together*, or perhaps bound together, as we often say when a bargain is under way, that the people are trying to "get together". There is still a third word for that same thing—bargain. But the word "contract" having been more associated with law, has been kept more strictly to its early meaning; for instance, it seldom has anything to do with the profitableness of an agreement, while "bargain" is often used to mean merely a profitable transaction. A good contract generally means one that legally binds

the parties, while a good bargain means rather one that is profitable to one side or both. Yet each word is used in both senses. Bargain, tho., is never used in a general sense as one of the great foundation-stones of civilization, as we shall see that Contract is. People of low intelligence or low morality or both, sometimes break contracts, on the ground that they do not yield good bargains.

*168. Contract nos-
sible only to the
Free.* A slave or serf cannot make any contracts to speak of, because he cannot depend on keeping any; he can only do what his master says. This affects his rights to property: for, as whatever he does is under his master's orders, his master takes the profit or bears the loss. If there is a loss—if crops turn out badly, for instance, the master is supposed to take care of the slave under all circumstances.

Whether the system is good or bad, depends upon what it is compared with. Slavery would not be good in a civilized community; but savages are so much like children that, if left to themselves, they would be more apt to starve, and rob and kill each other, than if an able man had absolute control to keep them in some sort of order, and tell them what to do.

All societies that have reached civilization, have had to pass through conditions of slavery, serfdom and feudalage.

Many societies have long stood still, like those of India and China—some until they could stand no longer, and were overcome or died out. Nothing higher than a vegetable can stand still and flourish—a society, a business, a human being, or even a beast, must progress—at least enough for exercise, or it will decay. It is like a person on a bicycle—he must move or come down.

*169. Contract an
education in free-
dom.* The way to teach a man to take care of himself, is to leave him to take care of himself, just so far as safety permits. Obviously, a man cannot get ahead unless he can dispose of his own labor, and in the present state of man-

kind, he cannot get ahead very far, in property at least, unless he can dispose of the labor of others. This does not mean unless he can enslave others: free-men cooperate with a man of true ability to their own good, as well as to his.

The difference between the modern guide of labor and the slaveholder, is that the slaveholder, even tho he be incapable and unable or unwilling to take good care of his slaves, can still force them to work for him. The modern employer cannot force his laborer to work for him, because the modern laborer, especially with modern facilities of travel, can contract where he pleases. He is not shut up on his master's place, as the churls and the villeins of England and the serfs of Russia and slaves of America were. The civilized laborer's power to contract, makes it necessary that his employer should treat him both well and ably. Therefore the modern employer must be really able—capable of guiding his men well, and deserving his position, or competition will get his men away from him. And it is becoming more the case every day, that employers have to compete with each other to get the best labor; and he who best guides his labor, and cares for it so as to make it most vigorous, intelligent and cheerful, generally comes out ahead in the competition, and makes most money.

The scientific name for the primitive state of affairs where most men were obliged to stand still just where they were born, is *status* (the Latin word for standing). One reflecting upon the condition is tempted to suggest the English expression "stick-in-the-mud". The condition where men can dispose of themselves and their property as they please, is called the condition of *Contract*. Wherever *status*, or "standing", is the condition, if a man is born a ruler, important or petty, he stays one; if he is born a serf or peasant, he stays one.

In quite primitive societies, there are examples, such as Mahomet and Genghis Khan, of people changing

their standing very much, but they were only occasional men in generations: there could be only one now and then, because they rose by controlling men, not by contracting with them. In our day, nearly every civilized man can contract.

^{172. Contract, Freedom and Private Property all evolve together.} The system of property-holding under which Mahomet and Genghis Khan rose, was communal (54), with some slavery and hardly any Contract. There is hardly any Contract under the communal system, because nobody has enough estate in the land to make much contracting with it, or its produce, possible.

The property-system under which Hildebrand and Rudolph of Hapsburg, for instance, rose, was Feudal (55) with some little contract. There was more contract under the feudal system than under the communal, because the estates in land were much longer: at the outset of the system they were generally for life, and rapidly became transferable and even hereditary, tho always limited, of course, by the rights of the overlord.

The system under which Lincoln and Garfield and Peabody and Peter Cooper rose, is of course the most advanced of all—private ownership and contract everywhere.

We find, then, Slavery, no Contract; Communism, hardly any; Feudalism, a little; Private Property, Contract everywhere.

Under feudalism, the relation of each man to his feudal superior, was apparently one of contract to furnish so much military or personal service; or later, a certain portion of the products of his land. But reflection shows that it was a contract only so far as a contract can be made by one side, and that side the stronger.

As men have risen under all systems, of course there is no system where *all* men stand still. In other words, there has been no condition of universal Status or of universal Contract. All that the facts show is that the more Status and the more Communism, the fewer men rise; the more Contract and the more Private Owner-

ship, the more men rise. Under the amount of Contract in the United States, a thousand men—probably ten thousand, possibly a hundred thousand, improve their condition, where one does in Russia or India, or did in mediæval Europe or under the Turks or Tartars.

The first marked decrease of Status and increase of Contract appears in the decline of Feudalism, which is another name for Militarism, and in the increase of Private Property. Militarism declined as civilization advanced, in spite of the fact that Europe is a collection of camps to-day. But those camps have ensured peace in Europe since 1870: each nation has been merely *playing* soldier to keep the others from attacking it. Before 1870, there had never been ten years without war among them.

The decline of Militarism was essential to doing away with Status, because extreme militant conditions are necessarily conditions of status: people can simply command and obey: the enemy will not allow them any chance for divided policy, or much chance to do business or accumulate property. Hence it is only in civilized society that the chief activities, instead of being warlike or militant can be industrial. In a militant society, the men generally do what they are compelled to; in an industrial society, they do what they agree to: so they are making contracts all the time.

^{175. Fighting versus producing.} It really is a question between a fighting life and a trading life, or rather a *producing* life. With communal or feudal property, people never produced enough to get rich, and the only way people like those of India or Greece or Rome ever got rich, was by robbing somebody else. And as a fact, they never did get rich in the modern sense. A few people got rich, and made a great show, and did some fine work in art, literature and statesmanship; but the masses were slaves.

^{175 (a). Illustrated in nations of to-day.} Among communal and feudal peoples to-day, it is about the same. There has not been much change in Russia and India and China, for instance, except in name.

Japan is the greatest instance the world ever saw of rapid growth in wealth, power and civilization; and she is an illustration of our thesis: her progress has been accompanied with the most rapid change ever seen of communal and feudal property into private property, of a general condition of status into one of contract. In Japan, too, despite some superficial appearances, private property and contract depended on the down-fall of militarism: in the barbarous and feudal sense of every man being a fighter and thinking of little but fighting, militarism has gone. The Japanese gentleman does not now carry a sword much oftener than the English gentleman, and in Japan, despite the wonderful showing in her war with Russia, fighting is ordinarily as much a matter of special profession as in France or Germany.

176. Why Private Property is essential to advance beyond status. The spread of the institution of private property, then, as distinct from communal property (54) or feudal property (55), is necessary to change a condition of status

into one of contract, because to do much contracting, a man must have property of his very own. If the community or the overlord owns all the real estate, there is not much personal property to contract with. No communal or feudal people ever got much personal property yet, unless by pillage.

While wealth is not civilization, there never has been any broad and high civilization without wealth. The boasted poverty of Sparta, for instance, was accompanied by virtual slavery of every man to the state, and by a general belief that skill in theft was a virtue.

177. Civilization and trade go together. As, then, wealth depends on manufacturing and trading, we seem brought to the practical conclusion that civilization rests on people trading freely with

each other, and such is the fact regarding all civilization except the sort built on pillage and slavery, and that sort is narrow and perishing. There never has been very high civilization enjoyed by *the general community*, without a

great deal of trading; and the higher the civilization, the more the trading. Then comes in the fact that there never has been much trading without the wide prevalence of the institutions of private property and contract, and there is no reason in sight to believe that there ever will be; and then follows the conclusion that a producing, trading, contracting form of civilization is as much needed to produce from the ranks of the common people a statesman like Lincoln, as to produce a manufacturer like Peter Cooper.

178. Breaking Contracts and advocating Socialism. All this demonstrates that a man who breaks a contract is doing his mean little share toward bringing the world back to the condition of status; and that a man who advocates socialism is trying to put the state in the place of the slaveholder, and so to lessen the amount of contract—to make government command what people shall do, instead of leaving them to contract to do what they please—in short he too would get us back to *status*.

Here are two views on the subject that are worth thinking over: In 1903, Grand Master Morrisey of the Brotherhood of Railway Trainmen said to his national convention: "We shall see the time when we will regard the contract-breaker . . . with as much contempt as we now regard the scab." C. P. Shea, President of the International Brotherhood of Teamsters, on trial at this writing for instigating the assaults and murders in the Chicago Teamsters' strike, said: "I do not consider anything a violation of an agreement, that is done to uphold the principles of trades-unionism."

CHAPTER XIV.

GENERAL LAW OF CONTRACT.

Now we will consider the details of Contract. Courts do not want to use their time without reason—when, for instance, somebody claims that there was a contract when really there was none at all: so the courts have established a test by which to determine, when parties dispute, whether there really was a contract between them.

^{179. Essentials of a} To be a contract, there must be an offer by one side, an acceptance by the other, and a reasonable consideration why the offer should be made and accepted.

All such considerations are found to be included under the three categories of something to be given, something to be done or refrained from, or natural love and affection. The Romans included it all (except natural love and affection) in four cases—I give to get you to give, I act to get you to give, I give to get you to act, and I act to get you to act.*

But the subject is not really covered by something given or to be given, or something done or to be done: it may include something *not* to be done, or, as already said, something to be refrained from. A has a right to do something, B offers him something not to, A agrees. Now A does not agree either to give or do, but merely to refrain, yet he binds B to give or do what he offered as an inducement for the refraining.

* *Do ut des, do ut facias, facio ut des, facio ut facias.*

Yet if we take "act" in the broad sense of a course of conduct, the Romans' pat way of putting it, does cover the idea of refraining being a "consideration". "By a man's acts shall he be judged"—"acts" there evidently includes temperance and self-restraint—refraining from certain acts, as much as doing certain others.

^{179 (a). Illustrations.} Now to illustrate each kind of contract:

A offers B a dollar for a plant; each article is given that the other may be given. This is Roman case I. A offers B a dollar to do a day's work. This covers Roman case II. A offers B to do a day's work for a dollar. This is Roman case III. And A offers B to do a day's work if B will take him for a drive on Sunday. This is Roman case IV.

To illustrate the case the Roman summary leaves out—where the consideration is refraining from doing something: A has a lot next to B's, and proposes to build a wall that will shut out light and air from B's house; B offers him a thousand dollars to refrain from doing it: A refrains: B is bound to pay the money.

It may be observed in passing (tho we shall return to the subject again) that while it may not be right to shut light and air out of your neighbor's house, it may be more nearly right than it would be to keep your own wife and children in rooms too small for them, or to have noise or anything else from your neighbor's windows disturbing them.

^{180. Natural Love and Affection.} To illustrate a contract where the consideration is natural love and affection:

A father agrees to do something for a son without receiving anything in return. Now the law does not enforce mere gifts, but it will hold this to be a good contract, because it holds the natural love and affection to be a consideration. Yet that consideration seems queer, because if a father agrees to do something for a son because he loves him so much, and then refuses to stand by it, he simply proves that he did not love his son that much—in other words, that there was no consideration; all of which seems to show that where natural love and affection is alleged to be the con-

sideration, the contract may be a very weak one; and that where natural love and affection is strong enough to make a contract strong, there must be love enough to make a contract unnecessary. Yet there is a more logical view than that the father does it because of his own love for his child, namely, that the father makes the contract *because the child gives him* the "natural love and affection." But, strange to say, I do not happen to have known this view presented elsewhere. Yet there is good reason, after all, why courts should support such contracts, even if the consideration is held to be natural love and affection entertained by the person making the promise: for if a man fails in business or dies, those who take charge of his affairs must carry out his contracts as far as they can, while his mere intended gifts, where there is no consideration, may frequently be set aside. So it is more merciful to his unfortunate family, to put his gifts to them on as good a footing as his business transactions. Yet, tho the courts will generally enforce contracts based on "natural love and affection", unless there is also a "good and valuable consideration" they are apt to look with suspicion upon them, and to set them aside if they bear any strong indication of wronging creditors or later purchasers for valuable consideration.

181. Promises and Contracts.

Of course entirely outside of any "consideration" whatever, a promise ought to be as binding as a contract, in honor: because there should be no honor less than perfect honor; but it is not as binding in law, and this because, for many reasons, law cannot deal with so delicate a thing as honor. Justice is as high as law can go.

We spoke (163 b) of endorsements being made, like promises, without consideration, simply from friendship or favor. The question of whether the law will enforce them, of course cannot come up regarding the person originally responsible on the paper: for the endorsement is simply an obligation to pay, not the principal, but third parties, if he does not. But if those

third parties are innocent holders for value paid, the law enforces the endorsement. Yet often the third party—a bank for instance, is not an "innocent third party", but knows that the endorsement is merely for accommodation, and yet takes the accommodation paper, just as it loans money at the market rate if it is higher than the legal rate, because it depends upon people to carry out their contracts without appealing to defects in the law.

If paper has been forged, its possession for value by an innocent third party, does not make it good, unless the person whose name is forged can be held for some gross carelessness. The reason is that nobody ever undertook to pay it.

Justice requires enforcement of contracts, and not of promises, because breaking a promise without consideration, takes nothing from the other man, while breaking a contract takes from him whatever he does or gives on his side, or the thought and trouble and arrangements he may have been put to in making the contract, and toward carrying it out. To illustrate: if A is under promise to B and under contract to C, and then fails or dies, so that both cannot be satisfied, C, who has parted with some consideration, would suffer more than B, who has parted with nothing: therefore the law does what it can to protect the contract, while it pays no attention to the promise.

But where natural love and affection is the consideration, C has not parted with anything, and yet the law treats the case as if he had, because there would be so much hardship if the law should require the representatives of bankrupts or deceased persons to do as much to keep all promises alleged (perhaps falsely) by strangers, as to keep promises to relatives. True, people often love outsiders more than relatives, but the law cannot go into as fine points as that: proof is too difficult—*natural* love and affection—that is, such as it is natural, under ordinary circumstances, for all men to have, is as much as the law can attempt to take into account.

182. Legal fiction. It is undoubtedly something of a fiction to make "natural love and affection" a "consideration", like money, or goods, or services, or self-restraint, but many of the greatest improvements in the law have been made by just such fictions (190). For instance: where people are damaged by others in their property and reputation, and come into court for redress, the principle of the law is that they must not only prove that the acts of which they complain really took place, but they must prove that the acts were damaging, and just how many dollars' worth; yet if a woman proves that she has been slandered in the dearest part of her reputation, the law brings in a fiction that she *has* been damaged by the slander, whether it fell on willing ears or not, and does not require her to *prove* that she was damaged. If she really was damaged, of course the law's assumption that she was, is not strictly a fiction. In this sense, fiction is a technical term meaning a general principle, regardless of whether it is true in any one case or not.

As there is a tendency in fictions to do harm, it is a maxim of the law that fictions must never work injustice—that is to say: that when a judge finds that the fiction usual in somewhat similar cases, plainly does not *justly* apply to the case in hand, he must not decide as if it did.

183. Mutuality in contracts. Now let us consider *mutuality* in contracts. It always "takes two to make a bargain". Contracts must always be mutual,—the understanding must be mutual, the consideration must be mutual, and the obligation must be mutual.

First: the understanding must be mutual. If you say that to-morrow you will lend me a gun now in the hands of a friend, if I will bring a written abstract of ten pages of Spencer, and I agree to do it supposing you mean Spenser the poet, while you really mean Spencer the philosopher, there is no contract between us, for our understanding is not mutual. If either of us finds out the misunderstanding, he should make a reasonable effort to let the other know that there is

no contract, so that in case the abstract of the poetry should not be a satisfactory substitute for the abstract of the philosophy, one may not lose the trouble of getting the gun, or the other of writing the abstract. It would be reasonable also to see if the parties could make the contract that one or the other intended—either for the abstract of the philosopher; or, if the other would not agree to that, whether he would be willing to make the contract he understood—regarding the abstract of the poet.

The second point necessary to the mutuality of the contract, is mutuality of consideration—that is to say, as said before, *each* side must undertake to give or do or not do something, in consideration of the *other* side undertaking to give or do or not do something. For instance: if a man renders a service such as helping a horse and wagon out of a ditch, without the owner asking him to, or agreeing to do or give anything in return, he cannot make the owner pay.

It seems hard not to be paid for valuable volunteer services, and any decent man would pay. Yet to admit the principle that volunteer services must be paid for, would overwhelm the world with superfluous and worthless pretexts of service—like, for instance, needless opening of carriage doors, and sweeping of crossings already clean.

As farther instances, suppose A tells B that he will do something if B will do something else—that A will cook the breakfast if B will get up and light the fire. They are not under contract unless B says he will light the fire, or straightway does it, and lets A know that he has done it.

Suppose A tells B he will do something, and B therefore expects that he will. A has not contracted to do it, but has merely promised.

184. Law and Religion.

In law a contract is more binding than a promise (as we have seen), or even than an oath. The reason is that an oath is a matter of religion, while the law deals only with justice. In modern times people know that it is as much a mistake

for law to try to handle religion as to handle honor. Now, for instance, witnesses need not swear on the Bible: they can merely "affirm", if they prefer.

185. Justice and Honor. It might at first seem that in honor, one party to a contract should complete his side of the contract even if the other does not, because he has promised; but the third point essential to the mutuality of a contract is that the obligation is mutual. If one side fails in his obligation, that releases the other; and it does so in honor, because the dishonorable have no claims upon honor. And that is not reducing honor to the level of justice, because to permit the dishonorable to make claims upon honor, would be to reduce honor to injustice. Honor can never be contrary to justice. If, then, the dishonorable man has no claims, it might seem at first that anyone would have a right to deceive or rob him. But tho the dishonorable are not entitled to anything beyond justice, they are still entitled to justice.

186. Contracts the law will not enforce.

(a). **For wrong doing.**

If one man agrees to pay another if he will kill a man or set a house on fire, and the other agrees, there is a contract, but the law will not enforce it, because it is against public policy: the legal maxim is: "Men may contract, but not to do wrong." In a more extreme case: if one party risked his life and liberty to commit murder or arson, as there is no wrong in the mere payment of money, honor might require the payment of even the wages of crime, but the law would not enforce it.

186 (b). Wagers.

A bet, too, has all the characteristics of a contract, but the law will not enforce it, because betting adds nothing to the wealth of the community, as a contract enforced at the expense of the community ought to; and because the habit leads a man to laziness and improvidence. And looking at the mutuality of bets, in the long run they are hardly so nearly an even thing that they can claim enforcement even on the ground of fairness: for in the long run,

those who lose must suffer more than those who gain enjoy. This requires a word of explanation: for in the long run, of course, bettors' fortunes must average the same. Now assume that average to be any sum you please—say \$10,000. Then, as President Hadley * points out, a man who loses \$5,000 will lose what his family has come to regard as essential comfort, and will suffer seriously, while the man who wins will not receive anything that his habits require, but a mere superfluity that he will be apt to waste as gamblers almost always do. In fact, often so unbalanced are the two sides that loss is suicide, and gain a brief period of dissipation—evil both ways, tho disproportionate, and seldom if ever any real good either way.

If one party to an alleged contract agrees to do something impossible—to drain the ocean or move Mount Washington, he is not liable in damages if he fails, because an agreement to do an impossibility is not a legal consideration.

But if he agrees to do a reasonable or proper thing, and fails because of accident—sickness or a delayed train, he must pay damages: the misfortune is his, not that of the other party.

186 (c). "The Act
of God or the Pub-
lic Enemy." Yet of course he can guard against accidents in his agreement, as for instance, carriers of goods generally guard against the "Acts of God and the Public Enemy", meaning as "the act of God", any convulsion of nature, like storm or flood or earthquake, or probably a sickness not brought on by a man's own fault; and as the act of the "public enemy", that of any foreign force with which we might be at war, or of a pirate at war with all mankind. A native mob or insurrection is not included in the legal definition.

187. Law Imposes
self-preservation. If a man agrees to do all the work he can possibly do, for less than will keep him alive, he should not go on until he dies, because it was a promise to commit suicide: that is not legal: so he is not bound by contract. Whether

* "Economics."

he should go on and take his employer's money until he can find another place, and then leave his employer in the lurch, is not a question of contract, as there is no contract. It is a question of honor, and is brought up merely to help define the boundaries of the subject.

^{188. But cannot furnish wisdom.} But let us take another case of doubtful contracts. Suppose a man agrees to work for enough to keep him alive, but less than his production. It is a contract, because the law does not assume it to be either illegal or immoral to make a bad bargain, but only foolish; and the law cannot attempt to cure people of folly, or guard them against the consequences of it.

^{189. Contracts which the law assumes.} People can get into contracts without knowing it, just as they can get into other scrapes, through ignorance or stupidity. This seems not to agree with the earlier statement that there must be a mutual understanding, but in some cases the law assumes that there is, and will not listen to any evidence to the contrary. For instance: if a servant or mechanic or clerk is hired for any period—say a week or a month, and continues on without either side saying anything, the law assumes a contract for another period of the same length. So if a house is hired for a period so brief that a written contract is not necessary (82 b), continued occupancy after the period, without anything being said, leads the law to assume a contract for a second period, and so on indefinitely.

The law also implies that any person employed to do any service shall receive "what he has deserved",* and also that the service shall be performed with due skill and faithfulness. If it is not so performed, servants cannot get their wages, and would have to pay any damages caused by ignorance and carelessness.

The law may perhaps also be said to assume contracts that money is to be paid back (on demand unless specified) in any of three cases—when borrowed; when spent, either for one's benefit by another with the bene-

* *Quantum meruit.*

ficiary's consent or in an emergency; or received from any source in behalf of another.

Similarly, if one takes any article having value, and nothing is said about price, one must pay "what it was worth",* and the seller cannot recover a price beyond that.

If merchants keep an open account, a contract is implied that either will pay in case the balance is against him, whenever it is struck at the customary time.

The law assumes these contracts as involving "the greatest good of the greatest number". They exist only by approval of long experience.

190. Estoppel. The law makes a distinction between these informal contracts and formal ones. In fact, it is sometimes hard to tell whether there is a contract, or what the law calls an estoppel, that is, whether one side or both are not in a position where they are *stopped* (or "estopped", as the lawyers say) from denying a contract, tho none may have been formally entered into. For instance, in some cases of renting and employing, if neither party had said anything until after a second term had been entered upon, a court might hold that both were estopped from denying the existence of a contract, and would have to act just as if there were one. There is another kind of estoppel called "estoppel by deed" produced by putting a seal on an instrument. After the seal goes on, the signer is estopped from contradicting anything said in the instrument. Otherwise he can contradict any statement that the other party has not acted upon. But action by the other party also has the effect of an estoppel.

An assumed contract or an estoppel, seems very closely related to a fiction (182). It was said above that "in some cases . . . a court might hold" that there was an estoppel. We were touching upon "the glorious uncertainties of the law": tho there are a great many exact rules, circumstances vary so much that it is hard to tell before a case comes to trial, what rules are going to fit it.

* *Quantum valebat.*

191. Carelessness and Fraud. Careless people, and the people who haunt the borderland between carelessness and fraud, often get into positions where they are estopped from denying responsibilities that they did not really intend to undertake.

Carelessness and fraud come pretty close to each other, because one who is careless about what he does, is very apt to become careless about what he says; and as careless people are constantly getting into scrapes, they are worse tempted than careful people to try to lie out of scrapes. A legal maxim that covers most cases where a man can properly be estopped from denying an obligation, is that "No man can take advantage of his own wrong", and carelessness is a wrong.

As to fraud, some authorities claim that there is an implied contract regarding it—that it is an implied part of every contract that there shall be no fraud. But that seems drawing it unnecessarily fine. The matter seems covered by the general principle of the law—to enforce no contract where there is fraud, and always to give damages against fraud.

192. Fraud never defined. Just what constitutes fraud, however, the law is very careful not to say: because human wisdom could not frame a definition broad enough to cover all possible cases of fraud, any more than all possible cases of any other kind; and even if it could cover all cases of fraud heretofore known, the ingenuity of the wicked would invent new cases not covered by the definition, and so escape. Therefore, the court has to determine each case. A fairly intelligent court can follow the serpent's track more flexibly than a rigid definition could.

No transaction, whether based on contract or not, can stand after it is found to be fraudulent, provided suit to set it aside is brought within a reasonable time of the fraud being discovered—for agreements not under seal, in most of our states, six years.

193. Statutes of Limitations again. A limit to the time is secured under the statutes of limitations (*82 k*) which

were passed largely to protect innocent persons. A long time after a piece of wrong-doing, it would be very easy to blackmail: for it would then be easy to manufacture evidence that could not be refuted.

Moreover, after many years, when the person who perpetrated the fraud might be dead, it would hardly be fair to have somebody coming down on his heirs.

194. **Force vitiates contract.** Fraud is not the only condition that will vitiate a contract otherwise good: an assent obtained by force or threat is no more valid than one obtained by fraud.

Of course fraud and crime take up a great deal of time of the courts, and of course the courts (not to speak of the police, jails, reformatories and prisons) cost the taxpayers a great deal of money. Yet if everybody were honest, we could not get along without

courts, unless everybody were wise too: for various sorts of unwisdom often tangle up people's rights so that they have to go into court to find out what their rights are.

195. **Courts needed against Ignorance as much as against Fraud.** (a). *Illustrated in confusion, construction and friendly suits.* Take a case of what is called in law "confusion" of one person's materials with another person's labor—a man building a house for another, or a woman making an expensive frock, may get it all wrong and spoil a lot of good material, and yet suppose that it was being done right, perhaps because the owner of the materials may have failed to give clear directions. Again, intricate questions constantly arise over the meaning and effect of old contracts, or of provisions of wills, as well as of statutes passed by legislative bodies; and as somebody must put a working construction on them, that is generally done by the courts. Honest people are getting into disputes over such matters all the time, and many suits are, even in fact as in name, "friendly"—simply to get a matter settled in one way or the other, when the parties do not care which way. Such cases are perhaps most frequent when people are acting for others—executors for estates, guardians for minors, trustees for corpora-

tions; and to avoid liability themselves, they must be sure to act legally, so they need an authoritative decree

196. Contracts
when parties do
not meet.

Not all contracts are made by people face to face: many are made by mail, telegraph and even telephone.

A man making an offer in a letter, is not bound by it before the other party has posted his letter of acceptance. Most judges have decided that the acceptor cannot revoke (say by special messenger or telegram) between posting his letter and the receipt of it by the man who made the offer, but there have not been enough cases tried since the telegraph came into general use, for the subject to have been so thoroughly argued that all judges are now agreed.

Tho the offerer has a privilege of revoking until his offer is accepted, the acceptor should not have the same privilege until his acceptance is received, because, for many reasons, the general principle of law is that a contract is made when both parties consent to the same thing. It is of course important to fix the time of this consent. A man may write a letter of acceptance without being at all sure that he will post it, but posting it is the last thing he can do with it, and when he does that, it is reasonable to conclude that his mind is then made up, and consequently, that at that instant the parties are agreed, hence that the contract is made, and therefore that neither can revoke. Another argument is that the proposer has made the mail and telegraph operators his agents (214) to receive the acceptance, and that consequently, when it is delivered to them, it is legally delivered to him.

And yet this view does not seem so free from doubt that it ought to be finally considered as the law. There is certainly room for a great deal more argument, as is shown by the fact that judges are not 197. The law is an evolution. yet absolutely agreed, and the only safe way is to make a proposition subject to the proposer receiving word of its acceptance by a specified time.

And doubt has certainly at some time covered most questions that are now clearly settled: nearly all the matters that seem very simple ones to us, were by no means as simple to our ancestors. For instance, take as simple a thing as regard for human life. When a sovereign kills a subject who displeases him, our ancestors, even as late as Henry VIII.—yes, as late as James II., would have differed as to whether it was a legal execution or a murder. But now, if our President or one of our governors were deliberately to kill an unoffending man, it would be a murder; and even as to the sheriff who hangs or electricutes a man nowadays, a great many people think that any voluntary killing of a human being, except in immediate defence of one's self or another, is wrong, and will some day be against the law.

CHAPTER XV.

LAW OF CONTRACTS CONCERNING PERSONAL PROPERTY.

So much for the general principles of Contract; and as to our last few words on the uncertainty and evolution of law—that is a topic to which we shall have to revert more than once. Now let us examine into some of the specific laws of different kinds of contracts, beginning with such an every-day matter as selling and delivering property. It is not always as simple as we are apt to think.

Suppose I have a horse and want you to buy him. You say you will give me \$100 for him, and will bring it next day; and I say: "All right, I'll send him to you"; and we separate. Suppose I change my mind. Can you oblige me to sell him? * No: for under the

198. Sale and De-
livery,

(a). as gener-
ally affected by
the Statute of
Frauds,

Statute of Frauds (82 b) a contract for over \$50 (later legislation varies it in the different states from \$30 to \$200) must be put in writing, at least unless there was delivery of money or something else from one side to the other, or some other part-performance.

Here neither horse nor money was delivered.

Let us note in passing that the law also requires to

* While I have had to realize the failure of the dialogue form in which the earlier editions of this book were written, it seems so peculiarly adapted to the topics of this chapter, that I have ventured to retain some traces of it for them.

be written, or partly performed, all contracts relating to real estate (except a lease for a year or less in New York—in some states, three years or less), or to becoming responsible for somebody else, or making a trustee personally responsible for the benefit of a trust estate (218), or to something to be done more than a year afterwards, or where the consideration on either or both sides is a promise to marry.

The law requires these formalities, because the obligation of Contract is so great, and the necessity of performing contracts, and of the law's enforcing them, so important, that it has been found wise to make people cautious in entering into contracts, and to guard people from getting into them too easily. Moreover, where contracts are specially important or peculiar, the law wants better evidence of their existence and nature, than mere memory of spoken words.

Probably no statutes have ever had wider effects than the Statutes of Frauds. But it is a most instructive comment on the uncertainty of legislative wisdom that many good lawyers think these statutes have encouraged more fraud than they have prevented.

198 (b). by Part Payment. To return to our contracts in selling and delivering property: if you had given me \$5 on account of the horse, he would then be under contract of sale, the \$5 being consideration to bind that contract. I could not then sell him to anybody but you, and give you back your \$5. Thus for personal property, part payment will bind in the absence of writing.

If the matter in hand, instead of a horse, were a thousand bushels of oats which we had agreed upon a sale of, and you had paid me for only a bushel, our contract would be good for all.

If you had paid for none, but I had put a bushel in your buggy, part delivery would be as good as part payment.

But coming back to the horse, suppose I had been too good-natured, and endorsed a friend's note (163 b), and were to find on my way home that the sheriff

had taken the horse to pay the note after you had paid the \$5. Is he still my horse? Yes, he was mine under contract of sale. But if the entire
198 (c). *Prior Lien.* price had been paid before the sheriff took the horse, the sheriff took your horse. It would be necessary to fix the time of both events. But that would not be easy, and as "possession is nine points of the law", the outcome would probably be that the sheriff would hold the horse, and I would have to return your money.

Should the horse be killed while in the seller's possession, it would be the buyer's loss only if title had actually passed—if, for instance, either party had said, without contradiction, words to the effect that it was the buyer's horse, and that the seller had a claim on the buyer for the rest of the money. But until such an arrangement is definitely made, or until the horse is delivered, it would still be only a contract of sale. But the buyer has a first claim on him for any money he may have advanced before getting possession.

Such a claim is usually called a lien, which means in law a right to sell property to recover some claim against it. Next to mortgages and judgments, the most frequent liens are those of mechanics against things—especially houses, that they have made or repaired.

Now to return to the horse-trade. Suppose the horse had been paid for, but there was not time to make a good delivery before the sheriff took him, how
199. *No one can sell more title than he has.* is the buyer to get him? The law would give him to the buyer, wherever he is.

The sheriff can only sell whatever title the seller had in him, and after he was paid for, the seller had none.

That would of course be hard on the man who had bought him from the sheriff, but he would have a right to get back the money he had paid the sheriff.

200. *Possession and ownership.* If the \$100 had been paid, the horse would be the buyer's property, as against

all previous claims, except a registered chattel mortgage (163 e), even tho he remained with the seller.

If he burned up in the stable before the seller had time to deliver him, it would be the buyer's loss, but the seller could probably still collect insurance on him, if he had any, because policies generally cover "goods sold and not delivered", but if the buyer had paid, and the seller should collect insurance, he would have to pay it to the buyer.

But suppose farther that the seller had paid some bills with the \$100 on the way home, and the sheriff had said: "Well, if you've just sold this horse for \$100, show me the money: I'll take that", and upon the seller's failing to show the money, the sheriff had said that he did not believe the seller had sold the horse at all, and the sheriff had taken him and sold him. He would still be the buyer's horse, no matter in whose hands the sheriff might have placed him, and the buyer would have a right to take him wherever he could find him—not to take him by force, however: because, as already said, no man can legally use force except in self-defence, or in arresting for crime: in

201. Owner must
not secure posses-
sion by force. other cases, he must appeal to the law. The buyer could enter another man's

stable to get his horse, but only without force. If force is used, it must be by due process of law.

Suppose the seller had not paid the bills with the hundred dollars, and when the buyer sent for the horse and found him gone, he were to prefer the money to the horse with the trouble of following him up through the sheriff's hands, and so he were to ask for the hundred dollars back, would the law give it him? Perhaps the seller *ought* to, as he would have got the buyer into the scrape, but the law would not. The buyer could reasonably try to get his horse, but it would be absurd to try to get the seller's money. It is now the seller's hundred dollars, and it was the buyer's horse that the sheriff took.

~~202. Delivery and acceptance complete~~ If the seller had had time, before meeting the sheriff, to send the horse to the buyer's stables, tho the buyer had not paid, the horse would have been the buyer's, and the seller would have had a good claim against the buyer for \$100.

~~202 (a). Delivery to agent or carrier good.~~ The same would have been the case if the seller had given the horse to the servant or any other agent of the buyer before the buyer paid for him.

If the seller had started him for the buyer's stable by the seller's own servant, and the sheriff had met him, he would, unless paid for, still have been the seller's horse.

We have seen then that the ways in which the transfer of ownership of personal property can be effected, are by paying for it, or delivering it on the buyer's premises, or other premises named by the buyer, or delivering it to him, or to a person properly acting for him.

Accordingly, in shipping goods, they become the buyer's upon his paying for them, or upon delivery to a carrier named by him, or to any common or public carrier, unless he had ordered a different one. Probably there would be an exception to the last rule in cities where dealers generally deliver the goods they sell, and sometimes do so by public carriers. Probably a court would hold that a dealer in goods usually delivered at the house, is bound to deliver at the house unless he warns the buyer that they go at his risk.

Upon delivery of unpaid-for goods, tho the seller no longer owns them, he has in place of them, a claim on the buyer. He should not deliver them unless he thinks the claim is practically worth more to him than the goods.

If the buyer named one carrier, and the seller delivered to another, the goods would be the seller's until the buyer received them, unless it was impossible to deliver them to the buyer's carrier, and the seller had used proper diligence to get as good a one as possible in his place.

In such a case, however, if the goods had been un-

reasonably delayed or damaged or overcharged for freight, the buyer would not be bound to receive them. He would, however, be bound to pay the charges of a carrier he did not select, unless excessive; if excessive, he would have the choice of refusing the goods or of claiming the excessive charges from the seller.

203. Conditional Suppose the buyer had not seen the horse, but had only said: "I like your description so well that if he comes up to it, I'll take him", still he could not be the buyer's before he had accepted him, even if the seller's groom delivered him, and the buyer's groom accepted him, unless the buyer had given his groom special authority to judge and accept him. But if, after hearing the seller's description, the buyer, without seeing the horse, had said: "All right, I'll take him", he would have had to keep him unless he was ready to say the description had not been just.

If the buyer had said: "I'm going away, but I'll come and see him within a month", and the seller had said: "All right, I'll keep him for you", it is a complex question whether the seller would have been under contract to keep him. What really passed between the

204. Option. parties was that the owner gave an option, and the question is how much that option was worth. If it was worth more than \$50, the agreement to keep the horse, and agreement to go and see him, do not make a contract, without writing or payment on account. We must distinguish between an option and a contract of sale. Now an option has value: one party has all the advantage, and generally he should pay for that advantage. He can buy or not: if values change, it is a case of heads, he wins; tails, the other loses. But in a contract of sale, the chances are even, if other things are even: for change of value before the contract is completed, is as apt to be on one side as the other. Accordingly, the mere right to buy goods if wanted (or leave them alone if not wanted), is often matter of bargain and sale—quite possibly more often than goods themselves, especially in some classes of

goods. In grain, perhaps the option sales amount to more than the sales of actual goods. The same may be true of some stocks.

205. When defects must be disclosed. Suppose there had been a defect in the horse. Was the seller bound to tell of it?

If questioned, he must answer honestly, if he answers at all. But he has a perfect right to say: "There is the property; judge it for yourself." Here applies the maxim of law: "Let the buyer look out for his own interests."^{*} This applies specially to horse-trades, but also to all trades where the buyer has full opportunity to examine. Some very honest people often refuse to say anything about their wares—especially their horses (For now and then, perhaps, a man can sell a horse without losing his honesty), because they fear that there may be defects of which they themselves are not aware.

Yet the principle of refusing to disclose a defect when it is known, is not good, but it is like something discussed before: it is more in the field of honor than in the field of law. It would be very hard to enforce laws requiring it, and it is unwise for the law to attempt more than it can do: because failure is very apt to lessen the respect in which it is important that the law be held.

But there are cases in which a man is bound to tell the whole story: an employee or a person acting for another in any capacity, is always bound to tell his principal all essential facts. For instance, if a gentleman sends his coachman to look at a dealer's horse, the coachman is bound to tell all he finds, while the dealer is not.

206. Warranty. A seller also, if he warrants his wares, must, in self-defence, tell how far he warrants them. Whether the contract of sale implies a contract of warranty, is a very complicated question. In ordinary cases, the two contracts are separate, and

* *Caveat emptor.*

extra price is often paid for warranty; but in dangerous cases, like drugs and food, the courts would probably imply warranty with sale. Of course, as often said, the law insists that there shall be no fraud, but cannot always insist on things being usable for the purposes that they are sold for. That point opens up an enormous number of mixed and delicate questions. Probably the farthest the law could go in any case, would be to punish fraud if proven.

A large and interesting class of contracts closely allied to warranty, includes those of suretyship—guaranteeing that the responsibilities of another 207. Suretyship. person shall be performed. This, of course, includes endorsement, which we have already treated (163 b). Even where one has had no real interest in a piece of negotiable paper, if he puts his name on the back of it, the law assumes a right in any subsequent holder, on giving prompt legal notice, to claim its value from him. He becomes surety for it.

An endorsement is in writing; but if, in our horse case, the buyer had said that his finances were not in good shape, and a friend standing by had said: "Well, if it turns out that he can't pay you, I'll help him and see you made good," the speaker would not have been bound. Under the Statute of Frauds (82 b) any "contract to answer for the debt, default or miscarriage of another", must be in writing, and signed at least by the party who may have to answer.

Suretyship and warranty shade into 208. Insurance. another large class of contracts embracing all kinds of insurance. Fidelity insurance is especially like suretyship, but also fire, marine, accident, life, plate-glass and all the rest, are of course of the nature of warranty; but the warrant extends, unless otherwise agreed in the policy, not necessarily to the full amount of the policy, but only to the value of the property at the time of loss. Hence the desirability of keeping the policy small, or having it declare that the amount insured for shall, in case of loss, be taken as the value of the property. Life-insurance companies, however,

are always liable for the full amount of their policies.

209. Bailments We come now to the wide questions of Bailment, from the French *bailler*, to deliver. That is the law term for placing movable property in the possession of somebody not the owner, or for the relations arising from such placing of any property. It will be noticed that that is different from the delivery which changes ownership. In bailment, the owner and receiver are called, respectively, bailor and bailee. Now suppose in our horse case, the seller had delivered the horse to a railroad company, and they had failed to deliver him to the buyer: if he had been killed by an accident on their road, they would have had to pay the seller for him, unless the accident was caused by "the Act of God or the Public Enemy".

Very early the law made common carriers responsible for the acts of highwaymen, because they were so often in collusion with them (202 a). We are defenceless against "the Act of God", but the owner would have a chance of recovering the horse's value if he were taken by the public enemy: for in the case of war, if the government were to get an indemnity, it would perhaps pay such private claims; and in the case of riot and insurrection, the citizen has a good claim against the state for not preventing the trouble or suppressing it before damage is done.

For any other matter sent by freight or express, the company's liability would be the same as for the horse.

The liabilities of common carriers are the same for all sorts of property, except that they are not responsible for deterioration in perishable goods like meat and fruit, unless there is special agreement regarding time of delivery. They can protect themselves by charging different rates for articles that differ in durability or strength, and they may perhaps altogether refuse extra-hazardous articles—like dynamite, tho they do not if they can get paid enough.

Probably if a railway company sells a ticket presum-

ably for a particular train, it is bound to provide a seat. This would hardly hold, however, where a number of tickets are sold to be used at pleasure—commutation tickets for instance. A passenger who cannot find a seat in a common car, may take one in a parlor-car or a sleeping-car without extra payment, until one in an ordinary car is vacant.

209 (b). "Common Carrier" defined. A "common carrier" is a carrier for pay, of virtually anything that offers.

If one travels and checks his trunk, whether the company is liable for any amount of value in the trunk, is a very doubtful case, and has often been decided each way. The weight of the decisions now makes the companies liable for ordinary non-business baggage, even up to the outfits of sportsmen, and most elaborate costumes of ladies.

Handbags are at the risk of owners, so would be valuables not properly constituting personal baggage in trunks.

The carrier's responsibility for horses is weakened (tho not always destroyed) by their being in charge of the owner or his agent.

209 (c), Limiting Liability without contract. Confusion in the law has resulted from differences of opinion as to whether a company can relieve itself from liability by

printing on tickets (as it always does) that its liability shall be restricted to a certain amount. While that cannot make a contract unless the passenger agrees to it, the companies' lawyers claim that in accepting the ticket, he does agree. The question ought to be settled by statute, but probably the companies influence the legislatures not to settle it in one way, and fear of constituents prevents the legislatures from settling it the other way.

If the passenger has not even read what was printed on the ticket, the companies claim that one takes the ticket on his own risk, and ought to read it—in short, that the ticket is a sort of bill-of-lading.

209 (d), Bill-of-Lading. A bill-of-lading is a carrier's receipt for goods. These were issued long before

passenger-tickets were—even when people used to travel only by horse and carriage; so the law of bills-of-lading was evolved and settled long before there were any passenger-tickets. A man consigning goods to a carrier is bound by anything on his bill-of-lading that is not against the law; therefore, if he is wise, he will know what is on it before accepting it. Perhaps the judges would decide that passenger-tickets are to be put on the same footing as bills-of-lading, were it not that when a queue of people is waiting before a ticket-window, and the train is soon to start, it would not do for each one to have to read his ticket before accepting it. Moreover, as railroads are chartered for the public convenience, they should not be permitted to restrict it needlessly by their one-sided alleged contracts. The general tendency of the courts, however, is very properly in favor of the shipper, as the companies are too apt to act as masters of the situation.

209 (e). Hiring. Now take another case of one party's responsibility for returning the property of another: if the railroad company were hiring the horse, and paying for the use of him instead of carrying him somewhere for pay, it would still be responsible to return him unless prevented by the act of God or the public enemy: he becomes for the time of hiring, the company's horse, and it undertakes to return him (or his value) when the time of hiring is past.

If while he was hired, a thief had taken him from the stable, the hirer would have to find him; or if the hirer could not find him, or if the thief drove him to death, the hirer would be responsible to pay.

209 (f). The Law does not require impossibilities. There is an exception to this responsibility, where, *at the time of hiring*, some condition exists making it, in the nature of things, impossible to return the hired article—for instance, if, when the horse is delivered, he has a mortal disease that carries him off while he is in the bailee's hands. But if he catches grip while in the bailee's stable, that is the bailee's risk.

If he is vicious and runs away and kills himself, if the bailee could prove that he was habitually vicious, the bailee would not be responsible; and if the bailor knew it (as in that case he presumably would), the bailee could even get damages for any harm the horse might do him.

If he is burned up, that is the bailee's risk, too, but of course bailees can insure against it, or bailors can when bailees are not reliable.

The same principle of liability holds for all sorts of property, if left for the bailee's use.

209 (g). Bailment without consideration. If anything is received without pay—solely for the bailor's convenience—for instance, jewelry or a picture that one does

not want to store with ordinary furniture, the bailee is under no responsibility, except for the grossest carelessness. Similarly, if, as is often the case, an express company deadheads a private package for a man who gives the company much business, the company is responsible only for gross negligence: there has been no consideration making a contract to deliver safely. But if, for instance, a bailee had borrowed a horse, the bailment would have been for his own benefit, and he would have been responsible—as responsible as if hiring, and more responsible in honor, as the owner gets no benefit; and accordingly, a judge and jury would be more apt to throw all the points against the borrower.

209 (h). Liability of Innkeepers. Suppose the borrower had gone off for a driving tour, and stopped at a country inn, the landlord putting the horse in his stable. Would his responsibility to the borrower be the same as the borrower's when the horse was in his stable? Probably it would be stronger. Generally an innkeeper's responsibility for the property of his guests has been the same as that of a common carrier: perhaps, tho, it may be doubted whether this responsibility would extend to the stable.

Yet while the early law made by the decisions of the judges, was as stated, many statutes have been made by legislatures to exempt the landlord from responsibility—

for instance, for jewelry and valuables unless these are specially put into his hands, provided he gives notice to that effect. In some states, to relieve himself of responsibility, he must put such things into an iron safe. Perhaps this general tendency to relieve him of responsibility would influence judges as far as the stable.

Approximately, the innkeeper's responsibility indicates the responsibility of all other bailees for pay, tho as he was one of the earliest bailees, and as in early times the law could take much less account of circumstances than it learned to in the course of its evolution, the law is rather harder on the innkeeper than on most bailees.

The rigor of the common law with innkeepers arose from its having taken shape at a time when innkeepers were apt to be in collusion with highwaymen and other thieves.

The innkeeper is also obliged to keep his place in sanitary condition and furnish wholesome food.

Suppose the owner of our horse had 209 (1). Pledge. borrowed fifty dollars, and had left the often-aforesaid horse as security: he is not for the time as much at the risk of the lender of the money (called the pledgee) as he would be if he hired or even borrowed.

As a pledge, the lender must return him in good order, if he will permit; but if he gets sick and dies, the pledgee is not responsible, as he would be in hiring. It must be admitted, however, that horse cases are harder than most other cases: a horse is more apt than a load of stone, for instance, to get sick and die, and the difficulty of horse cases is one of the reasons why I have used them. More changes can be rung on a horse than on a load of stone.

Courts hold people regularly receiving pledges, such as pawnbrokers and stockbrokers, to very strict accountability, yet if a horse dies, or anything goes wrong with other perishable property in a bailee's hands, even when hired, and the judge were to tell the jury that in strict law the bailee was responsible, and that they must fix

the value, they would be apt to fix it pretty low. The situation is one of the many where "the glorious uncertainties of the law" are specially uncertain. But yet there is a general principle that runs through it all, and

209 (j). General principle of Liability of Bailees. which would influence both judge and jury. The law of bailment has been evolved from such varying circumstances

that, in many departments, it has hardly settled down according to principles. It seems tending, tho, to make the liability—the amount of care required from the bailee, vary with the advantage he derives from the bailment: if he gets no advantage, as in taking to accommodate the bailor, he is responsible only if he is grossly negligent; but if he gets an advantage, as in borrowing, or hires an advantage worth paying for, as in ordinary hiring, he must take good ordinary care, and that will not always save him; but when we come to bailees who make their living from their bailments, such as common carriers, innkeepers and holders of pledges, they must take all possible care, and even then they are not always safe in case of loss.

210. Tender. Where a party admits that he owes something, but there is a dispute about the amount, it is wise promptly to make a tender of what he thinks he ought to pay. Otherwise he could not claim the performance of any of the agreements that his opponent hesitates about; and in some states, if a seller tries to back out of a contract for goods, and the buyer makes him a tender, the goods become the buyer's property at that moment, even despite the seller's wish, and only the amount to be paid remains to be adjudicated.

Moreover, if the court should decide that more was owed than had been tendered, if no tender has been made, the debtor would have to pay interest on any sum the court decides due, and the costs of the suit. If a tender has been made, the debtor would not have to pay interest up to the amount tendered, or any costs, unless the court should decide more owed than the tender.

But in some cases the *acceptance* of *any* tender has been held to discharge the debt.

210 (a). Kinds of money in. A check is not a legal tender. The check might not be good. Pennies are legal

tender only up to twenty-five cents. Silver small change is not legal tender for over ten dollars. Silver dollars are legal tender for any amount, in the absence of contract to the contrary. Silver certificates might be expected to be legal tender only for public dues. Gold English sovereigns are the best money in the world, but foreign money is not legal tender. Legal tender in America is only American money—copper, nickel and small silver only in the small amounts stated, and gold coin, silver dollars and government legal-tender notes in unlimited amounts, tho contract can be made against all but gold.

The reasons why some kinds of money are legal tender, and others not, are: that a debtor should not be able to force a creditor to take a cartload of copper for a thousand-dollar debt, or a cartload of silver for a ten-thousand-dollar one, if the creditor has not been wise enough to contract against either; much less should he be obliged to take a check that it is possible the bank may refuse. So it is necessary for the law to determine what he shall take. This is done by *210 (b). Determined by Congress.* Congress, of course: as the Constitution gives Congress the sole power to coin money, it alone can say what is money.

The Supreme Court has virtually decided that the power to coin money includes the power to print paper money, or at least that the power to *raise* money includes that of raising it by issuing legal-tender notes; but many of the best lawyers still think it does not.

211. Contractual Disabilities.

A minor is incapable of making contracts, except for necessities. Formerly, and perhaps still in some states, married women cannot contract, and everywhere idiots are unable to.

If, for instance, a minor's doctor recommends him to ride horseback, and he refuses to pay for a horse he

has hired, a jury would have to decide whether, considering his health and circumstances, the horse could be called a necessity. Should the jury agree that the

212. Some limits
of Quantum
Valebat. horse was a necessity, as there was no contract (the hirer being a minor), the owner still could recover for the hire, on the

ground that anybody who supplies a minor with a necessity, may recover "what it was worth"—*Quantum valebat* (189). This principle of *quantum valebat* is not applied only to supplying minors altho they cannot contract, but it applies when anything really making

212 (a). Enrich-
ment. an "enrichment" is supplied, even by mistake. Tho in ordinary language a minor or anybody is not "enriched" by riding a horse, he is in the legal sense, if it does him good. Even if it does not, he would still have to pay for it, if good judges had recommended it.

But if he had been supplied with something harmful, as too much whiskey, for instance, the seller could not recover.

The question of *quantum valebat* is constantly arising where things have been furnished not under contract, but by mistake. Once money was paid an English admiral by mistake. He went on a long spree with it, and successfully defended a demand for its return, on the ground that it had not "enriched" him any. There are many good judges however, who doubt if that was good law.

If an owner who had agreed to sell anything, wanted to back out on the ground that there was no contract because the buyer was a minor, probably the courts would not excuse him if the minor sued through a guardian for enforcement. The principle would seem to be in accordance with the maxim that "no man has a right to take advantage of his own wrong". The seller in the supposed case, being of age, is presumed to know what he has, and has not, a right to do. He has no right to contract with a minor (unless for a necessity, under his health and circumstances) and

therefore cannot take advantage of his being a minor, to set aside the contract.

But suppose for some reason which we need not take the trouble to invent, a minor wishes to set aside a contract, has he not been as wrong to go into it as the adult: so should he have any more right to set it aside? The law is pretty decided that he should. It is the special province of the

213. The law pro-
tects the weak.

law, so far as it can, to protect the weak. The minor is in special danger of being led by adults into unfair contracts, so he rightly has the power to set them aside. The adult, on the other hand, is left to take care of himself, and is all the better for the responsibility. True, as already said, the law cannot attempt to discriminate between strong men and weak ones, but it can tell the difference between people over twenty-one years old, and those under.

CHAPTER XVI.

LAW OF CONTRACTS FOR PERSONAL RELATIONS.

214 Agency. If A, being away from his stable, sells a horse to B, and on coming home is met by his groom, who says: "Here's a hundred dollars that I just got from C for that horse you told me to sell, and he has taken him away", whose horse he is depends upon whose horse he was when the groom sold him to C. If A had sold him to B before the groom sold him to C, he was B's. A could not give C any title to him that A did not have himself. But if A's man had sold him to C before A sold him to B, A had no title to sell B.

214 (a). Authorized acts bind principal. A's man could give B as good a title as A had, if A had made him his agent to do so. But if A had not said to him substantially. "Sell that horse when you can get \$100 for him", but had only said substantially: "I think I'll sell that horse when I can get \$100 for him", he had not made the groom his agent to sell the horse, and no agent can do more than he is authorized to do, *unless* the principal has, carelessly or otherwise, given the third party good reason to believe that the agent had the necessary authority.

Again, suppose A had given instructions to sell the horse for \$100, and the groom had given C an option (203) on him for a month. A's instructions did not give the groom the right to tie the horse up for a month, so that A could not take a better price, unless the groom was sure of the sale at the end; or perhaps

for that long, even if he was sure, because the horse might get sick or die meanwhile.

But if A had said: "Do anything you please with him that will put me to no expense, but don't bring me less than \$100", that would probably have given the groom a right to give an option, if he honestly expected that it would lead to a sale: yet it was rather risky. Most courts would probably hold such an option good, if the consideration for it were good.

214 (b). Agent liable for exceeding his authority. If the consideration for the option on the horse was held to be good, and the option itself were held not good because the agent had exceeded his authority, the remedy could only be through damages by suing the agent—if he had enough to pay with: a principal can be sued only for what he has authorized an agent to do, or that which through negligence he had permitted his agent to assume authority to do, after having placed the agent in a position in which he might deceive the public.

214 (c). Principal bound also by acts of third party has good reason to believe he is authorized. As already intimated, an agent can do all that his principal has given a third party good reason to believe the agent has been authorized to do: for instance, if A had said to C so lately that A could not be reasonably supposed to change his mind: "I always let my man buy and sell my horses as he thinks best: I'm so buried in my books that I don't attempt to know anything about the stable"—if A said that, he would be estopped (190) from denying it to C, after C had acted on the faith of it.

Nor is the principle of estoppel the only one or the main one, that forces a man to abide by the authorized acts of his agent.

Now in the horse case, suppose A was not the real owner, but merely the agent for the owner, and the owner disapproved A's selling him, whether the court would enforce the sale, would depend, as already said, upon whether the owner had led the buyer to believe that A had the authority; or if not, upon whether A

had exceeded his authority, or whether, merely, the owner had changed his mind after giving A authority. A principal is always bound by the act of his agent, unless the agent exceeds his authority.

214 (d). Agency through necessity. There is also Agency by necessity. A wife and children are a husband and father's agents to supply the family with necessities according to his means, and so can render him liable; or if in accident a bystander takes the place of a disabled agent, the principal is liable for consequences. Should a man running a launch become ill, and a passenger take the wheel, if he wrongly ran down another boat, the owner of the launch would be liable, tho he had not engaged him. It is an old maxim of the law that he who does an act through another, does it himself.*

214 (e). Agent cannot make any profit for himself. If the owner of the horse had said: "Sell him for \$100", and the agent had done his best, and got \$150, he would have no right to keep the difference: an agent is simply his principal's self, as far as business between them is concerned.

To leave horse-trading for a moment, suppose an agent were sent to buy a piece of land on which the principal was going to make an improvement that would greatly raise the value of land in the neighborhood, and the agent bought some neighboring land on speculation himself. He could not keep it if his principal wanted it at the price. An agent in a transaction simply represents his principal in everything connected with it. It would be the agent's duty to tell his principal about the neighboring land: so far as everything connected with a principal's business is concerned, an agent's mind should be simply his principal's mind, and his pocket his principal's pocket.

Should an agent receive bribes to buy from particular people, the law would give them to his principal, and in some cases would punish the agent. Cooks and coach-

* *Qui facit per alium, facit per se.*

men acting as agents for the purchase of supplies, often take commissions on them, and pay high prices, and waste much in order to profit by needless purchases. All this they are frequently tempted into by competing dealers. The act is criminal in both parties, and the dealers being generally the more intelligent, deserve double blame. Employers who would rather endure the loss than take the trouble to prevent it, nevertheless owe it to the community to ferret out and prosecute such cases. Occasional examples made of them would obliterate a great and growing abuse.

If an agent known to habitually represent a principal, buys a thing at a higher price than the principal has authorized, the principal is bound, tho of course with right to recover from the agent. Hence on mis-trusting or discontinuing a purchasing agent, it is very important to give notice to people who have known him in that capacity.

214 (f). The superior is generally liable. It not seldom happens that agent and principal are both responsible. We can

imagine many cases where the other party to the contract might in reason sue the agent, and then the agent sue the principal, or *vice versa*; but it is a maxim that "the law abhors litigation", and in most such cases, the judge would order the first plaintiff to sue the last defendant direct. This fact and the fact that the principal is generally "good" for damages, while the agent generally is not, naturally make the custom as it is. "Let the superior answer" * is good sense and good law. But there is another principle of law working in the same direction: under the maxim already quoted—that whoever does a thing by means of another, does it himself, the agent is regarded somewhat as a mere involuntary instrument, and therefore not responsible.

214 (g). even for wrong done in course of routine duties, A principal is responsible for his agent's wrong-doing, if it occurs in course of anything that the principal has authorized his agent to do, but not in anything the

* *Respondeat superior.*

agent does outside of his authority. For instance, a servant was throwing snow from the roof of a house in New York. He had not given any notice to passers-by, and killed a man. The master had to pay damages to the man's family. Note in this case that it was not necessary that the master should specifically order the servant to throw off the snow. Agents such as servants and employees generally, have certain regular and ordinary duties; whatever they do in direct connection with those duties, their employers are responsible for. That may be hard on a man who, through bad luck, gets hold of a careless or wicked servant, but it is the master's bad luck, and not the victim's. But servants are hardly a question of luck. The law does well to hold a man responsible for care in selecting his servants or any other agents. An employer of many men could do great harm in being careless whom he sets to shoveling snow from roofs, or driving horses through the streets, or running elevators or engines.

*214 (h). which
Justice to the suf-
ferer generally
requires.* At first it may appear that if the agent does wrong, it would be fairer to sue him than to sue the principal. But it would not generally be fairer to the sufferer, because generally the agent is the man of inferior ability, and therefore of inferior wealth. But if he has any money, the sufferer may sue him if he prefers. People often employ brokers and commission merchants for the very purpose of keeping themselves in the background. In such a case, the other party to the deal must take his risks with the agent. The agent is personally liable when he does not disclose his principal.

If an agent employs subagents, he is usually responsible for them—a contractor doing work for another man, is generally responsible for his workmen.

*214 (l). Both prin-
cipal and agent
liable in wrong-
doing.* Yet if one makes another his agent to commit a murder or robbery, the responsibility does not slip past the agent and rest entirely upon the principal. In all wrong-doing, agent and principal are both responsible, where the agent acts under instructions.

214 (j). Classes of agents. Anybody appointed by another to do anything for him, is his agent to do that thing; generally attorneys, commission-merchants, brokers, auctioneers, salesmen, clerks, domestic servants, and any employee—so far as concerns what one was employed to do: anybody, in short, who does anything at the order or request of anybody else, is his agent, tho agents are generally employed to contract, while servants seldom are.

215. Partnership. A partner is more than an agent for the other partner or partners: in dealing with outsiders, each partner has all the powers of an owner. These powers are limited of course to the partnership business. A man may be partner in several concerns: of course his partner in only one, would not control anything in another.

But in case of disagreement among the partners of any firm, a firm can limit a partner's authority by giving notice, and anybody having such notice would deal with a partner at his own risk.

But when partners disagree, and a person dealing with them has had no notice, when one partner has spoken, the rest must abide by what he has said. If he runs them in debt, each one is liable to the full extent for everything any one partner may do in relation to the partnership property. So inclusive is this, that if A owns say one tenth in a partnership property, and B owns the rest, and B is rich in other things while A has nothing else, A can run into debt for a lot of worthless things, and B will have to pay for them. This presupposes of course that the two appear before the world as partners, and the worthless things are sold to them in good faith for the partnership account. It is very foolish, then, for a rich man to take a poor one into partnership, unless he knows him very well: for ordinarily a man's whole estate is at his partner's mercy.

Yet a limit to the liability of any partner can be made by advertising the amount that he has put in, and

stating that the liability is limited to that amount. The method varies in the different states, however, and a lawyer should be consulted.

To constitute a partnership, people must be associated in continuous business for the purpose of making money. An unincorporated club or a joining of forces for a specific job not taking a long time, does not constitute a partnership.

When partnership is dissolved, the liability of each partner for the others' acts, is terminated by notice of dissolution, to people with whom the firm has regularly dealt, and by newspaper advertisement to others.

216. Service.

In scientific language, almost any act that one does for the satisfaction of another is called a service. Pleading a case or singing a song is in that sense a service. For that matter, the law calls all persons servants who are in the employment of others for salary; the President himself is sometimes called the servant of the people.

In a contract for any sort of service, from that of a bootblack up to that of the highest artist, for any period—say for a week—the employee is bound to give good service and good behavior for a week, and the employer is bound to give decent treatment and honest pay for a week. If either defaults, it releases the other, and the defaulter is of course liable for damages. Yet among employers and servants both, there is a good deal of ignorance and stupidity about this matter.

216 (a). *Discharge for cause stops pay for rest of term.* There are not a few employees of all kinds who think they can be lazy and disagreeable, and still get their pay—even going to the point of asking pay for the full time agreed upon, when they have been deservedly discharged before it had elapsed. In such a case, it is always a good citizen's duty to fight even petty injustice, rather than yield because yielding is less trouble. Only in that way can the public idea of justice be kept high.

216 (b). Discharge without cause, or leaving for cause, does not.

But of course in quarrels between employers and employees, the employees are by no means always in the wrong: employers sometimes maltreat servants, or discharge them when they really are not to blame. In such cases the employee's right is to get wages for the full time agreed upon, even if no service is rendered for the portion of it after the discharge. But it is the duty of an employee to try to get work, even if wrongfully discharged, and any salary received for service during the contractual period, must be applied in reduction of the claim on the employer. The same principles hold between mechanics and clerks and agents and their employers, as between domestic servants and their employers.

According to the general principle already given, if the servants in a house, or mechanics in a factory, are paid by the week, and one of them is found to slouch or scamp his work, the employer is not bound to keep him the full time, nor can the delinquent claim wages for the full time under the contract. The contract means honest work for honest dollars: if he does not render the work, he is not entitled to the dollars.

If the employer turns him off Wednesday for cause, the law does not suppose that he might have worked honestly Thursday, Friday and Saturday. The law always judges people by their records: even if a man with a good record commits a crime, the law is more merciful to him than to a man with a bad record.

216 (c). Both bound for the entire term.

If an employee's record is good, but an employer finds he does not need him as long as he contracted for, it is the employer's loss: he should engage for only practicable terms.

If the employee is offered higher wages to leave a fair employer before his term is out, he is bound to stay his term. In the absence of special agreement, the term is usually the period for which payment is made—day, week, month, year: the special customs of the trade may affect the question. If a servant leaves

without just cause before the end of the term, he is not strictly entitled to *any* pay on account of that term, tho the judge would probably give him a *quantum meruit* (189), but if his departure had caused his employer serious inconvenience and loss, the judge would probably deduct part or all of the *quantum meruit* to make the employer good, or might even award him damages.

The case of the servant leaving, just cited, might be a very important one: for instance, if he were an expert engineer or electrician or life-insurance actuary, whose place it might not be easy to fill.

^{217. Remedies for} ~~Broken Contracts.~~ If contracts for service are broken in essential particulars—not merely in formal ones, the law will either issue an injunction against the employee leaving, if his staying were desired by the employer (not a very likely case, at least in the lower grades), or the law would give damages, or, if the case admits, combine both.

If the contract is not for personal service, but, we will say, for manufacturing goods, or building a house, the court would probably order "specific performance", as well as give damages for delay: it tries to meet the wishes of the aggrieved person, as far as justice will permit.

We have now gone through the principal kinds of contracts, which are Sale, Warranty, Surety, Insurance, Bailments, Agency, Partnership and Service.

CHAPTER XVII.

LAW OF SOME QUASI-CONTRACTUAL RELATIONS.

Now we come to a set of relations including those of the various kinds of trustees who manage property for the benefit of others. These relations sometimes arise under contract, and sometimes by mere appointment and acceptance. We can, however, see something like a contract in the latter case: there would seem to be consideration on both sides—giving the position with its emoluments (if any) on one side, and the performance of the duties, on the other. Accepting a position is certainly undertaking to perform its duties. Accordingly, for symmetry's sake, perhaps we may call these relations quasi-contractual ones, altho that term does not apply in strict legal usage: under it they are generally called fiduciary.

218. Trusteeship In general. A trustee of property is not merely a representative of another person or party, as an agent is: he really owns the property for a longer or shorter time, but owns it for another's benefit.

The principal classes of trustees are directors of corporations (who are trustees for the stockholders); assignees of bankrupts; administrators of estates when there are no wills; executors of wills, guardians of minors, and trustees without special names, who may be appointed for hundreds of purposes.

If a trustee does not pay over what is entrusted to him, or take reasonable care of it, he is liable to have his own property sold to make up any losses. He is

219. Safeguards. also liable to prosecution for "Breach of Trust", which is a crime punishable with imprisonment. This crime is perpetrated vastly oftener than inexperienced observers have any idea of, especially regarding the property of women and children; but it is very often hushed up, because it is peculiarly apt to happen between friends and relatives—trustees naturally being selected among them.

The best defence yet evolved against breach of trust, is making a "Trust Company" a trustee, instead of an individual; tho probably it is best to associate with the company, an individual friend of the "*cestui que trust*", as the beneficiary is called. Then instead of one man secretly yielding to temptation, it would generally be necessary for all the officers to yield together, with the knowledge and connivance of each other.

220. Assignees of Bankrupts. An important class of trustees are the assignees of bankrupt estates. When, through misfortune (or oftener through lack of economy or energy or some of the other qualities essential to ability), a man's debts exceed the value of his property, it is almost useless for him to go on in his own way, because he is apt only to make things worse. It is usual then to declare him bankrupt (*bench-broken*, from an ancient custom in the Italian exchanges of breaking the bench of a banker who had gotten into such a situation), and for him, either voluntarily or through the action of a court, to assign his property to a trustee who will dispose of it and pay the creditors such portion of their claims as it will yield. After the settlement, such as it is, is made, the assignee gives an account of it to a court, who, unless there is evidence of fraud on the part of the bankrupt, discharges him from farther liability.

220 (a). Justice of discharging Bankrupts. At first sight, this may not seem fair to the creditors; but it is a great deal fairer than letting the bankrupt go on making worse ducks and drakes than before, and so insuring

that the creditors' shares would be smaller still. On the other hand, if the bankrupt's bad condition were temporary—the result of some special misfortune, in case he is relieved of so much of his debts as he is not at the moment in condition to pay, he can take a fresh start with lighter burdens; and if he really has ability, there is nothing in his bankruptcy to prevent his paying his deficit when he makes money enough to, as indeed happens in an occasional case. But if a man lacks ability, it is best that his creditors should take the property he holds, and he find the place for which Nature made him, under the guidance of some man who *has* ability.

We now come to trustees for the estates of deceased persons. At the outset we must note a difference in the ways real estate and personal property are disposed of at the owner's death.

221. Administrators. If no will is left making a different disposition, the real estate, subject to dower or courtesy rights (82 g), at once becomes the property of the heirs, while personal property is held in trust by somebody appointed by the court, called an administrator, for the payment of funeral expenses and debts, and then for the division of any balance that may remain, among the relatives or others entitled to it.

This does not imply that a family must live off the real estate until all the debts are paid: there might be real estate in litigation that could not be used in years. In such cases, the court makes from the personal property, such allowances for the support of the survivors as the estate seems to justify, and even leaves something to the discretion of the administrator.

221 (a). Rights of relatives of intestates. Rights of inheritance, when there is no will, vary in the different states; but generally, rights of dower and courtesy being allowed for, the real estate at once, without any formality, vests equally in the heirs. "Heirs" is really a technical term, meaning the persons who take real estate

when there is no will. They are the nearest blood-relatives of the same degree—children or the descendants of deceased children if there are any; if not, parents if there are any; if not, sisters and brothers or the descendants of deceased ones if there are any; and so on, out to remote degrees of relationship. The children of a deceased person who would take if living, divide equally the share that the parent would have had. Of personal estate, husband or wife usually takes a third, or a half where there are no living descendants; and the rest is divided like real estate.

222. Executors. When there is a will, matters are settled *Wills.*

up by one or more persons usually appointed in the will, and confirmed by the court, called executors. There is a very great advantage in this: a man who has accumulated and managed property is apt to be a much better judge of who would better manage it for his family, than a court who knows nothing about it, and is apt to appoint as administrators near relatives who may lack the necessary business qualities.

Sometimes a testator forgets to name executors, or those he names may not survive him. In such cases, the court appoints administrators with the will attached.

The usual essentials of a will good in law, are that it shall be in writing, state the testator's desires clearly, and be as simple as possible. If it is intended to give a wife property to take the place of her dower rights, it should clearly say that the property is given in place of dower (or to a husband, in place of courtesy); it should name all persons naturally apt to inherit, even any that it may intend to cut off, so that they will not be supposed to be overlooked; it should be dated, and state that the testator revokes all other wills previously made by him; and it should be signed in presence of two witnesses not otherwise named in it, who themselves sign a statement written on it that it was signed in their presence, pronounced by the testator as his (or her) last will and testament, and that, at the testator's request, they have signed it

in his (or her) presence, and in the presence of each other. They should also append their addresses.

If it is not said in the will that it revokes all previous wills, and a previous one is found, the early one's provisions must be carried out so far as they can be without upsetting provisions of the new one. For instance, if the new will names bequests to A, B and C, and an old unrevoked will is found, leaving bequests to E, F and G, if there is money left after A, B and C are paid, E, F and G will be paid, or paid pro rata as the money holds out, and these payments would be at the expense of such persons as would otherwise have the money under the last will.

If a will is known to have been made, but cannot be found, if it can be proved that the testator did not destroy it, and wished it enforced (for instance, if it was accidentally destroyed after his death), and if any of its legal provisions can be satisfactorily proved (which they seldom can be), they are carried out. Otherwise the estate is divided as if there had been no will.

If after making a will, a man sells a piece of property named in it, the person to whom he has left it can get no equivalent: the will is to that extent of no effect: so people naming special pieces of property in wills, must be careful afterwards. A better way, unless there is reason to the contrary, would be to name only sums of money, or shares of the estate.

In some states, marriage or the birth of a child, after making a will, sets aside the will, it being assumed that it would be the testator's wish that the new member of the family should be provided for, which of course, would be done by treating his estate as if he were intestate.

Theoretically, a man can leave property to whom he pleases, tho if he passes over those who would naturally be nearest and dearest to him in favor of others, it would make it easier for those neglected to prove him of unsound mind, so that his will would be set aside.

222 (a). Who can- Under the English law, and still in some
not make wills. states, not only are wills of persons of un-

sound mind set aside, but also those of boys under fourteen and girls under twelve. In most states, however, the ages have been raised to eighteen and sixteen. Until lately, under the law of England, and perhaps still under that of some of the backward states, married women cannot make wills.

222 (b). Restrictions on alienation. There are also some other restrictions regarding what the law will or will not see carried out in a will. The experience of ages has shown that it is against "the greatest good of the greatest number" as the philosophers say, or against "public policy" as the lawyers say, that land or capital should be kept in hands that cannot or will not use it properly, and so made more difficult of attainment by people of ability who will get the most out of it, and manage it so as to afford the most employment and product for their fellow men; and it has also been realized that it is against public policy that the accumulation by compound interest of enormous properties should put so much power in any set of hands as to make them dangerous to the community.* For these reasons the law will not give efficacy to any disposition of property which will delay its passage into new hands for many generations. So it is very important in making a will leaving property in trust for the benefit of children or descendants more remote, not to run up against any of the laws affecting alienation. There are several of these, varying in different states, and much complicated by decisions under various circumstances: so it is wise to consult a lawyer whenever trying to tie up property for anybody's benefit, or for that matter in making any will whatever. And it may well be remarked in passing that it is very unwise to put off making a will until one's deathbed is reached. Not everybody dies in bed; and for those who do, the time is apt to be deferred, rather than hastened, by the consciousness that one's

* This well-established principle of law is now attracting the attention of those who consider it necessary to curb the power of the trusts, and to limit the accumulation of excessive fortunes.

affairs are as well adjusted as one can make them. In England, it is the drift of the law to let property be tied up at least during any existing life. Once a trust for the benefit of all the testator's grandchildren was maintained until the death of the last of eight grandchildren *who were alive when the will took effect*. But more grandchildren born *after* the will took effect, got no benefit from the trust after the last of the earlier grandchildren died. Yet of course the later ones participated in the division of the estate that the law then required, but the case would probably not have received the attention it has unless other persons were living who had to share with them to their disadvantage.

But there is an American illustration in a direction nearly opposite. The American law tends to restrict alienation only during the longer life of one of two living persons who must be *designated* in the will. Hence when a testator tried to create a trust for the benefit of *four* living granddaughters, it was declared void because he had designated more than two, during the life of the surviving one of whom the trust should last.

222 (c). Devises for educational or charitable uses. Notwithstanding all this, property can be tied up for educational or charitable uses as long as one pleases, and the benefit of such things as hospitals and schools can be restricted to particular kinds of people. Yet a testator could not endow an elegant domain with homes and schools whose use should be restricted to his descendants forever, because it would be a plain attempt to evade the law. Of course the determination of whether any such scheme is an attempt to evade the law, is one of the things that judges are for: they are all the time stopping attempts to evade the law. Such a case could hardly escape the attention of the courts, because as soon as the time should come for proving such a will, or later, when the legal time should come for dividing up the property, there would probably be people entitled to inherit, who would apply to the courts for their rights. It is not likely that all of a testator's family would have died out: there would be a distant relative somewhere.

If not, the property would escheat to the state anyhow.

When all bequests have been paid, if anything is left over, it is divided as the law would have divided the whole estate if there had been no will.

223. Guardianship. A minor child does not at once become the owner of his share of a parent's estate. He holds the legal title, but the management of it, including the signing of all papers relating to it, is generally done by his guardian—a person approved by the court, often the surviving parent, tho the guardian is generally named in a will.

After the testator's death, the will must be proved genuine before a court whose province it is to attend to the interests of widows, orphans and other beneficiaries from the estates of such persons. If there is no will disposing of an estate, application for administrators must be made by the parties in interest.

224. Need of Probate Courts. On first learning that courts appoint administrators or executors, people are very apt to ask: Why should a court come bothering in the private affairs of a family when it loses its chief member or any member? To begin with, a will is often questioned, and somebody must pass on its validity. Then the estate of a deceased person is not merely an affair of his family. The richest man owes some debts—probably the richer he is, the larger they are. Moreover, as we have seen, a man of great ability is called upon to help manage the affairs of a great many people—as guardian, administrator, and in the various other forms of trusteeship. His relations to all these people, not to speak of those to his family, often give rise, after a man's death, to a great many questions, and civilization has never been evolved very far without its being found necessary to have special officers, and even special courts, to see that justice is done in all these connections. Nor is the multitude and complexity of these relations the only reason why courts should supervise the management of the estates of deceased persons. Those for whose benefit the

estates are settled—especially children when they grow up, might not be satisfied, and might make claims on a guardian, or on the executor of a will, or the administrator of an estate where there is no will. If such trustees act under the advice and supervision of a court, their acts cannot be successfully questioned.

**225. Trustees for
defectives.**

Minor heirs are, of course, not the only persons whose property is cared for by somebody else. Generally a court appoints somebody to care for the property of lunatics, drunkards and spendthrifts who have families dependent on them.

**226. Court super-
vision of Trustees
in general.**

And there are still reasons of an opposite nature why trustees generally should be watched over by the courts. Persons having the interests of others in charge are not necessarily all superior to ignorance and temptation. The courts supply them with the experience of ages, and tend to guard them against wrong-doing of all kinds.

The judges tell them under what circumstances they may sell or mortgage real estate (unless unlimited power has been conferred in a will) and what sorts of investments they may make; and also require accounts of their proceedings.

Yet all these methods are not any more efficacious than other human inventions are: hence the desirability, as before stated, of a will naming executors who can be trusted, or associating a trust company in the management of the property.

When the task of any of the trustees we have been describing is done, they can be made safe from future trouble by taking their accounts before the proper court. After the court has approved them, the trustees are free from all liability, unless later there is evidence of fraud.

CHAPTER XVIII.

PERSONAL PROPERTY.

Schemes for Distributing it more Evenly.

(I) *Scamping, Forbidding Work, Destroying Product, Anarchism, Communism.*

Now we have some idea of the agencies by which property is evolved and distributed and protected, and we knew before we studied these agencies, that the distribution is very unequal—that the mass of mankind get very little compared with a few favored ones, and are naturally much dissatisfied with what they get. But we have studied to very little purpose if we have not come to a realization that the inequality is more of Nature's making than of man's, and that roughly speaking, and with a wide but decreasing margin of exception, the men loudest in objections generally get what they loudest claim—namely, get what each man produces—that, still roughly speaking and with a wide margin for exceptions, those who get little, produce little; those who get much produce much; and that he who would get more, must produce more.

But we also know that this is a slow and, to most men, virtually an impossible way; and that consequently the world is full of schemes for doing it in other ways. Some of these we will now examine.

227. Poverty has no causes. First, however, let us realize that altho a great deal of speculation has been spent on the causes of poverty, there is no cause of poverty. Wealth only has causes; but ignorance, stupidity, laziness and misfortune of course obstruct the causes of

wealth. In early times all people were poor, even to-day every child is born with nothing, and of course he has nothing until he produces it himself, except as it is given him from the production of others. Unless he produces much, or somebody produces much for him, he never has much. Poverty lasts until the causes of wealth are effectively put in action.

We have seen the conditions under which civilized man evolves his rights in personal property, to be initiative energy, discretion, frugality and the other virtues which we sum up as Ability.

Of course there are other ways to wealth, such as luck and inheritance. But supposing them frequent enough for poor men generally to build any hopes on (which they are not), there is a characteristic of wealth got in those ways, which detracts very much from its usefulness. It is generally very fleeting: "Easy come, easy go", and "Twenty-five years from shirt-sleeves to shirt-sleeves",* are proverbs that have grown up from general experience.

And yet the lazy and stupid, and even the perversely ingenious, are constantly nursing schemes for making everybody rich in defiance of the ways Nature has decreed, just as ignorant people are constantly trying to invent perpetual-motion machines, and to make water run up-hill by its own weight. We have already touched some of these schemes as affecting rights in real estate, but similar questions come up in connection with the products of labor, and we shall see in time that they come up in regard to money and taxation. Let us now examine the most prominent of the schemes for diffusing property without diffusing Ability to produce it.

The one probably in most general use is
228. Scamping work. "making more work". Workmen often think that they can make more work by

* Mr. Walker, of Worcester, whose investigation has already been alluded to (101, note), found that of the sons of the one hundred and seven manufacturers in his city in 1860, only seven had property, or had died leaving property, up to '89.

scamping their work or neglecting it—that if a job is done so poorly as to need doing two or three times, there will be just so much more demand for labor; or that if a man does only half as much work in a day as he reasonably might, two men will get a day's work out of a day.*

* From the *New York Times*, April 24, 1900:

"THE CRIME OF MRS. DERRICK.—A headstrong and unmanageable woman perpetrated a crime against the new social order in a Lowell carpet-mill the other day, by doing more work, and earning more money than the laws of the Carpet-Weavers' Union allow. The details of the shocking affair are set forth in a despatch to our neighbor the *Sun*:

"Lowell, Mass., April 21.—Three hundred weavers employed by the Lowell Manufacturing Company, one of the concerns in the Bigelow Carpet Company, are on a strike because one of their number, Mrs. Jessie Derrick, persists in turning more work off her loom than is permitted by the regulations of the Carpet-Weavers' Union. The union has decided upon a maximum product of two and one-half picces, but Mrs. Derrick has her loom speeded up so high that she can turn off three pieces a day. On account of this the union sent word to the agent of the company and asked that he compel her to reduce her production, but he refuses to stop the woman from earning all the money she is able to. . . ."

"Mrs. Derrick explains that her loom was not 'speeded up'. Not at all. It was her energy and quickness and willingness to work that wrought the mischief. Back of it all very likely lay the necessity of earning more money to support those depending on her for food. . . ."

"Other carpet-weavers in the Bigelow works are as capable of getting off as much work as she, but as the union has decided it is unwise for them to do so, they all comply with the rule limiting the maximum product of each operative to two and a half pieces.

"The dead level of triumphant inferiority cannot be maintained and the comfort of the incapable and the lazy safeguarded unless the two-and-one-half-piece rule is enforced."

From the Chicago correspondence of the *New York Evening Post*, Nov. '99:

"A short time ago a Chicago man, in moving a dresser, broke off a gas-jet which projected from the wall in his bedroom. He plugged the broken pipe and took the fragment to a gas-fitting supply house, intending to buy the short piece of pipe and attach it himself. When he asked for it the salesman said:

"'Are you a journeyman gas-fitter?'

"'No', said the customer, 'I'm a shoe-dealer. What's that got to do with buying gas-pipe?'

That certainly would promote the general good, if the world can be made richer by producing less wealth.

But its effect even on the laborers themselves is disastrous.

First: the scampers keep themselves out of jobs; Second: when they get jobs, if all scamp, tho' each scamper gets paid for his false work, he has to pay for the false work of other scampers; Third: in the long

" 'A whole lot', said the salesman; 'I can't sell you that section of pipe unless you have a working card from the gas-fitters' union.'

" 'But I want this pipe for my own house, and I'm going to put it up myself', protested the householder.

" 'That's the very trouble', said the clerk. 'You'll have to go and hire a journeyman gas-fitter to put that pipe on, I can't sell it to you.'

" And the householder was forced to hire a gas-fitter, at \$3.75 a day, to come and do the work.

" There was a quantity of old iron piping in the basement of a building, which the contractor sold to a second-hand dealer. The man drove his wagon down to the place and started to load it himself with the old pipe. He was stopped by a member of the Steam-fitters' Union, who told him he must employ members of the union to handle that pipe or they would call out all the union men of the building. He had paid for the stuff, and so he had to hire two men at \$4.50 a day to load his wagons with the pipe. . . .

" The Plumbers' Union has laid down the precise amount of effort which may be expended and branded 'one day'. There is a walking delegate in each ward whose duty it is to visit each job and check up the work, and any plumber found working longer than the rules allow is liable to a fine.

" In one case the stonework on a building was all completed except the keystone of the arch over the main doorway. An opening had been left for it, and the workmen were arranging a block and tackle to hoist it into place, when a walking delegate appeared and demanded whether the men engaged in the work were members of the Hoisting Engineers' Union. He was told that they were not—they were members of the Bricklayers' Union and the Stonemasons' Union and several other unions, but the hoisting engineers had been overlooked. At once he ordered the work on the building stopped until a hoisting engineer appeared to haul that forty-pound piece of stone up to its place, and all the work came to a standstill until the proper man was found.

" A lather of ordinary speed can put up sixty bundles of laths

run, the scamper lessens the general demand for labor, and of course his own wages.

228 (a). Keeps the scamper out of jobs. In illustration: a man in New York wanted to put a trunk-lift from his cellar

to his garret. Some steam-heating fixtures in the cellar were in the way. At that time, the steam-fitters had a very strong union, and it was said to be the policy to "make work" to a very extraordinary extent. Consequently steam-fitting in New York cost several times what it did in most other places, and the estimate for the alteration in question was so high that the owner concluded not to put in the lift: moral, "making work" cost the steam-fitters a job, and cost the lift-makers a job too.

Another illustration: in the nineties, no first-class mason in New York would do a job of plastering in less than three coats, while excellent jobs were done elsewhere in two. At length came a quarrel between

in a day. The rules of the union limit him to twenty-five. That makes the job last longer, and as the lather is paid by the day it keeps him at work more than twice as long. The plasterers who come after him can work no faster than the laths are put up, therefore his job is extended to twice its length by this simple rule.

"And now conditions have reached such a stage that the opposing forces are face to face and measuring each other's strength. The contractors and builders have warned the unions that January 1 will see a general shut-down unless rules, hours, and other conditions change. If that 'lockout' comes, no man can say where it will end."

When it does "end", it will be interesting to figure the profits the laborers have directly made through this form of scamping, not to include what they themselves will have paid out for scamped gas-fitting, steam-fitting, plumbing, hoisting and lathing.

After the foregoing was in type, the results appeared. From the *New York Evening Post's* Chicago correspondence, Dec. 16, 1900:

"The Building Trades Council . . . is rapidly nearing its end. . . . It had more than 30,000 members. . . . Now it has about 10,000, and [pending withdrawals] will reduce it to 7000. . . . The loss to the men in wages by permitting the unprincipled leaders . . . to prevent them working has been in the vicinity of \$2,500,000."

masters and men, and at least one of the masters told why he had declined to do two-coat work: the trade-union would not let its men work on jobs of less than three—one-third of most plastering jobs was pure waste, including those on the buildings for which the plasterers themselves were paying rent; and moreover many jobs must have been lost in all the building trades, as was just shown in the steam-fitting and dumb-waiter trades.

228 (b). He gets only one profit but pays many. But when the scamper has to pay other scampers, other scampers have to pay him: so it may appear as broad as it is

long. But he gets paid for his own work at first hand, while most work that he has to pay for, must pass through many hands before it reaches him, and he must pay toll to them all, and this toll is based on the scamped cost. Manufactured articles cost the consumer many times what the manufacturer gets for them. Hence, if the hands through which the article passes, scamp their work, the consumer has to pay not only for the scamped work of the first producer (as he gets paid for his own), but also for the toll of every set of hands through which it passes before reaching him.

Scamping lessens not only the demand for particular jobs, but also for labor in general. Work only half done, or done at half speed, costs twice as much as

228 (c). Cannot long receive good wages unless earned. Piecework. if properly done—in fact more than twice as much, because not only is half the labor wasted, but generally some of the material.

Therefore, not only is the public unable to pay for as much of it, but it cannot, in the long run, enable an employer to pay high wages. And if laborers return less than a paying product for their wages, the capital employing them must in time be used up, the employer's business diminished or destroyed, and the demand for labor be just that much less.

In order to make paying by the piece a good remedy against men spreading their work over too long a time, one would have to invent a remedy against scamping the pieces in order to get more pay in a given time. As a matter of fact, the highest order of work is done

"by time", and the lowest order "by the piece". A house done by "days' work" will generally bring more than one done by contract; and the better orders of mechanics, the world over, work by the day.

Putting the thing in the broadest way, if all men only pretended to work, the result would of course be that nothing would be produced, and no man would have anything.

229. *Pretending and forbidding labor.* The philosophers who believe in "making work" by scamping it, have not stopped at scamping. Thornton * gives a case where they tried mere pretending. A lot of stone-cutting had been done contrary to trade-union rules, and the union made the bosses pay men for standing idle over it with their tools, as long as it had taken to cut it. Thornton wrote forty years ago. In our progressive age, the papers are full of similar instances.

The schemes to rob somebody—even other laborers, for the benefit of labor, include the seizing of work that naturally belongs to somebody else, and making the community pay the waste of the unnatural arrangement. Of this class are laws requiring stone-cutting to be done in cities where the stone is used, and at city prices, instead of at the quarries at country prices. Such a law regarding some public buildings in New York City, was pronounced unconstitutional in 1901, at an important saving to the city.

The Supreme Court of Indiana, in a decision that a law was unconstitutional which obliged counties, cities and towns to pay at least 20 cents an hour for unskilled labor, held that cities, counties and towns have as much right as anybody else to contract for labor at the lowest market price. The proponents of the law hoped to establish a rate for labor generally: as if the matter could be lifted away from the law of demand and supply, otherwise than by disguised "charity".

Even more absurd than the foregoing proceedings, is the securing of business to the nation at the expense of the nation. Such a proceeding was the regulation

* On Labor.

that all material to be used in making the Panama Canal, should be bought in the United States, and when possible be transported over railroads in the United States—both steps regardless of whether the goods or the transportation would cost the people of the United States more in the United States than elsewhere. The first of these absurd provisions was revoked, and restored in answer to the clamor of the protectionists. At the time of this writing the second has been revoked, and there has not yet been time to restore it.

Protective tariffs, we shall see later, tend to become of the same class.

Of course, in the long run, such wastes must be distributed over the community, and if they were the rule, the wasting laborers would have had to pay back for them, all that they got for their own waste. No rule is good for anybody unless it is good for everybody. But that school of philosophers has not even stopped at scamping and pretending work: they go so far as to forbid it part of the time, as in the celebrated case of Mrs. Derrick (228, note).

This matter is important enough to justify adding one more extreme illustration. Early in 1906 the following resolution was introduced at the United Mine Workers' convention in Indianapolis, and referred to a committee:

RESOLUTION No. 107.

Whereas, The practice of many of our members, working under favorable conditions in various parts of this country, of making six and seven dollars per shift is detrimental to the best interests of our organization as a whole; and,

Whereas, This has a tendency to make it harder for us to obtain an advance in wages at our convention; and,

Whereas, The average miner is unable to make \$3.50 per shift; therefore, be it

Resolved, That this convention place a restriction of \$3.50 per shift, clear of all mine expenses, on all miners working at the face.

Presented by Local Union No. 99, Belleville, Ill.

A. L. WRIGHT,
T. J. HITCHINGS,
Delegates.

Scale Committee.

The *Times*, in commenting on this resolution, quotes Archbishop Keane:

"The man who slighted his work and gives his employer less than he agrees to give is a thief, and any labor union that upholds him in this slighting of work is a school of thievery."

The willingness of a trade-union committee to receive and refer such a resolution as that, demonstrates the body to be under the dominion of a degree of shortsightedness that it must take generations to cure; to be far below the control of reason; and in exigencies, to be susceptible to no other control than the unflinching power of the state. To temporize by anything short of that, is simply cruel.

If reports are to be believed, the Australasian cases of the early nineties, surpass even these. There labor was scarce and food cheap, and a man could make enough to live on by working half the day. The incapables would not let the capables do more than half a day's work. One must either soldier all day or go home when he had done as much as a slouch usually does in a day. Capable men began leaving the colony on account of it. But the demonstration of the absurdity was shown when the policy had stopped some industries and depopulated some villages, and some of the leaders and "walking delegates" were in jail for conspiracy.

But since these conditions were stated, they must have cured themselves: for nothing is said regarding them by the most recent writers. In fact, there is some reason to believe that the testimony on which they were based (tho it appeared in a high quarter—the correspondence of *The Nation*, unless I am mistaken—or I should not have accepted it) is exaggerated, and that the conditions were partly due to industrial depression and financial stringency. Dr. Clark * goes so far as to say that while such statements may apply to particular localities and occasions in Australasia,

* *The Labor Movement in Australasia*, by Victor S. Clark, 1906.

"Ca' canny" and restriction of output are not remarkably greater in Australasia than in Great Britain and some parts of America. Yet I let the original statements stand, with these qualifications, as an illustration to the inexperienced reader of the difficulty of getting correct information on subjects where there is so much controversy. We shall see plenty more of such illustrations.

230. "Shutting down" a different case. After all, it may be asked: where is the difference between laborers restricting work, and manufacturers restricting product?

The manufacturer generally restricts voluntarily, while the laborer is often forced to it—a direct interference with the Right to Work; if several manufacturers shut down, they all share the loss: if the incompetent limit the labors of the competent, the first gain at the others' loss. For the manufacturer, the public decides the question by refusing the goods; for the laborer, the question is decided irrespective of the public needs—the public may be suffering for the labor, but must go unsatisfied in order to enable the incompetent to get higher wages. The manufacturer's slowing up (in legitimate cases) is to prevent waste: restricting labor regardless of cases, in most cases is waste.

Even scamping, pretending, and choking-off labor have not been enough for the philosophers: they have often gone to destroying. The papers are full of instances.

231. Destruction as an aid to Production. As three in many, the stone-polishers' union made all the workmen in the Hotel Savoy in New York stop work until the polish was rubbed off some marble mantels that had been polished near the quarries instead of by the New York union. In 1905 and for some years earlier, in most American printing offices, the men who set advertisements, would not use electrotype plates sent by advertisers, before they had set up a copy and destroyed their work. At a meeting of glass-blowers' unions in Terre Haute in 1905, their national officers were instructed to "get out a circular to be sent to all labor bodies asking them to get their

families and their friends to break all bottles before throwing them away." Those bottles were the property of the brewers, bore their owners' names blown in the glass, were subject to reclamation wherever found, and their contents had been sold on the understanding that the bottles should be returned. The resolution of the glass-blowers was a deliberate invitation to destroy other people's property in order to make work for the glass-blowers.

People often falsely reason about a good many other things as they do about scamped work. In advocating

^{232. Only one class of many schemes to get something out of nothing.} not only scamped work, but some kinds of taxes (464) and cheap money (362) and all other schemes for enabling a man

to get something for nothing, people forget that schemes to get something for nothing are also schemes to make somebody (and themselves as often as anybody) pay something for nothing. This is inevitably the case of all wages artificially made higher than the natural equation between supply and demand (148 d).

^{233. People generally consider only income, not outgo.} That fact is so often lost sight of because people generally think that high wages cover the whole question of prosperity.

Men of average mind seem able to think of themselves only as producers, not as consumers. They do not seem able to reflect that they have to pay out money as well as to get it in, and that if other people's wages are higher than the value of the things produced, they themselves have to pay out something for nothing when they pay those wages, and have also to pay middlemen's profits besides, while they themselves only receive something for nothing, without any middlemen's profits.

In point of honesty, scamped work is exactly on a level with false weight or scant measure or an irredeemable light dollar. It is a scheme to make a man pay for a day's work without furnishing it to him.

Now let us look into some of the other schemes than scamping work, which have been regarded as superior to

Nature's scheme for enabling men to get rich. At the bottom of them all, more or less disguised, is (as we saw regarding real estate [65-74 a]) the idea of government withdrawing its protection from property rights, so as to give those who have been too stupid or lazy or shiftless to accumulate any property of their own, a chance at that of other people.

234. Anarchism. The most extreme proposition of this kind is to do away with government itself, so that a man who has no property of his own can help himself to the property of other people.

How long property would be produced under such conditions, the advocates of them do not say. There are some who want to do away with government, who still want property rights respected, but they do not tell us how they are going to get them respected: they want everybody to respect them voluntarily, and to be models of virtue all around—voluntarily. They say that it is a disgrace to a man to have to be compelled; and so it is, but all the same, a good many will not behave themselves unless threatened with that disgrace.

The form of insanity that wants these self-contradictory things—often a murderous insanity, often only the gentle mooning of certain poets, novelists and æsthetes who make themselves ridiculous in attempting the sterner sort of intellectual work—is attributable to the same source as most other forms of insanity—the abuse of a good thing. Government is a good thing, but it is often overdone. Those who have been unjustly oppressed by it often become incapable of seeing anything but evil in it, or in authority of any kind.

It need hardly be added that those who are afflicted in this way are called anarchists.

As they seem to be getting more troublesome, there is growing interest in ways of suppressing them. Reasoning of course can produce no effect. Violent repression seems to succeed no better, but a perfectly logical way has been suggested which may be worth trying: if a man wants to get rid of government, rid him of it, withdraw government protection from his person and

property, if he has any (which is not likely), and give him a chance to work his theories out in practice.* Tho government would not protect him, it could consistently restrain him, because in withdrawing its defence from him, it would not give up anybody's right of self-defence; and should the anarchist attack person or property, the victim would have a right to all the defence he could muster, including that for which he, unlike the aggressor, would not have abandoned his right to appeal to government. There is not enough argument for Anarchy, to admit of its finding a place in a sane mind, so we need not discuss it any farther.

Another class of dreamers are willing to retain government, but want to do away with property rights. This class includes communists and socialists.

Anarchists, communists and socialists claim that poverty is due to existing social arrangements rather than to the incapacity of many people, and the claim is true so far as bad social arrangements impede the operation of the causes of wealth. To upset the social arrangements as they propose, would be very well if 234(a). *Badness of present laws does not prove goodness of proposed changes.* trial had ever proved any other arrangements better. But nothing is more difficult than to tell in advance how a social arrangement is going to work. Those we have are the best we have tried, and it has taken a good many thousand years to get them even as good as they are now. They have improved so slowly, because human nature improves slowly, and all social machinery has to be worked by human nature.

235. *Communism.* The communists propose to substitute for the present order of property rights, having government make an even division all around,

* The author, while believing this remedy original with himself, of course supposed it probably original with a good many others. He first proposed it in *The Forum* soon after the Carnot assassination, and on repeating it in *The Review of Reviews* soon after the McKinley assassination, he received a copy of a similar proposal that had been made by Judge Arnquist of Wisconsin.

so that those who have saved nothing can have a share of what other people have saved.

235 (a). \$1,200 At a superficial glance, it seems as if *apiece.* such a scheme, if it *could* succeed now, would add vastly to human happiness. But it could not unless it produced more things: for we would have only a little more than twelve hundred dollars *apiece:* that being the average wealth in the United States in 1900. To divide it evenly would not increase the happiness of those who have less, as much as it would diminish the happiness of those who have more.

235 (b). *Sudden wealth a doubtful blessing.* And even if a division were to give sudden wealth, sudden wealth is not apt

to be used well. It certainly was not at the British coal-mines when a sudden rise in the price of coal gave the colliers a sudden rise in wages, and many of them spent the money in feeding their dogs on tenderloin steak, and smoking pipes with two bowls and one mouthpiece.

True, the *rich* do not always use their money well, any more than the poor suddenly getting it, *always* use it badly. It is only a matter of probabilities either way: there is no universal rule with so complex a machine as human nature. It is simply the general fact that a man who gradually makes his money, is almost certain to use it better than a man who gets it suddenly; and it ought to be superfluous to point out why.

Yet it would undoubtedly be well for people to have more, just as fast as they can make it: for that will be no faster than they are apt to use it well—and there is hope, as we have said more than once and shall give facts for later, that the ability to produce it * and to use it, are fast being evolved together.

* The wealth in the United States, is reported by the Census to have increased as follows. We shall find evidence later (Chapter XXIII) that the poor have received a larger proportion of it than the rich. In 1850, it was \$308 per head; in 1860, \$514; in 1870, \$780; in 1880, \$850; in 1890, \$1039; and in 1900, \$1236.

But must each man himself produce unaided all he can have? Not by any means: inventors and organizers are constantly enabling other people to produce more. Consequently a laborer in a civilized nation has more than a king in a barbarous one; but men seldom appreciate what they have, when others have more.

Not only would communism fail to
235 (e). *Would last but a little while,* make everybody rich, even for a moment,

but what wealth (?) it did give the very poorest, would all soon be either frittered away, or back again in the hands of Ability. As said before, the machinery has to be worked by human nature: at the outset, communism would make the lazy and shiftless profit at the expense of the energetic and saving; while after the outset, the shiftless would, just as now, soon waste what they had, not only in extravagance but in foolish schemes, and want a new division; and there would then be less to divide: the shiftless would have already used up their share; and communism would have taken away from Ability all temptation to produce more than it could keep—that is to say, more than the average; and would take from frugality all temptation to save more than the average.

235 (e). *Meaning-*
less without robbery. To carry out any scheme of communism, government would of course have either to rob the present means of production—factories, mines, etc.—from those who have produced and saved, or to buy them under eminent domain (78).

As to eminent domain, of course the communists differ among themselves, as people advocating ideas that do not hold together, inevitably must; some advocate eminent domain, while some go so far as to say that all property is robbery—that people of ability and frugality have stolen from those who lack them, and that the community, in taking all the land and mines and factories and railroads without pay, would only take possession of its own.

But even government's exercising eminent domain

over everything, and paying for it, would leave things just as they are. Everybody would get paid for what he has, and be taxed all he has, to pay it.

A practical difficulty not yet stated, is ^{235 (f). Many kinds of wealth cannot be divided without being destroyed.} how to divide up a ten-thousand-dollar house, or building-lot, or diamond or

picture or statue, so as to give each person his twelve hundred dollars. If an attempt were made to give each a share in the diamond, for instance, it is hard to tell what ten of them could do with it. They probably could not hire it out to some vain woman each night: for, as nobody would be worth more than \$1,200, no woman could pretend the diamond to be hers. As to the picture and statue, perhaps they could be exhibited, if enough people worth only \$1,200 apiece would pay to see them. But as to the house and building-lot, nobody could afford to live in the house or even to make it over into a tenement; and nobody could afford to build on the lot, unless under a syndicate arrangement. People who object to corporations are generally the very ones who would make it necessary for everything worth over \$1,200, to be run by a corporation.

There appears, then, to be no escaping the general conclusion that civilization rests largely on things that cost more than a thousand dollars apiece, and which cannot be divided, or even used to any advantage when held in shares; and that these things are the prizes which Nature holds out to men of great ability, to stimulate them to do all they can to invent and organize and regulate, so as to increase and cheapen things for the public good. Consequently, if you want to introduce Communism, you must begin by wiping civilization out. In short, Nature did not make this for a communistic world, but as one where wealth is the first condition of effective industry and the highest art, as well as the legitimate stimulus to invention, energy and capacity, and their legitimate reward.

But that is, of course, a hard conclusion for the men lacking in invention, energy and capacity; and among

the many ways proposed for making them as well off as anybody, there are many which do not involve the impossibilities of Communism, altho they all have impossibilities of their own.

CHAPTER XIX.

PERSONAL PROPERTY (CONTINUED).

Schemes for Distributing it more Evenly (Continued).

(II) *Socialism.*

236. Socialism. Chief among the schemes for giving the lazy and incapable the rewards of the industrious and capable, without attempting to divide everything, is that of merely putting all industries under the control of government, and dividing up product equally, and thus giving the poor an equal share in the profits. This is Socialism.

The idea at least does away with the objection to dividing up or holding-in-common things which would be useless if divided up or held in common, and it at least glazes over the objection to putting the capital of the frugal *directly* into the hands of the shiftless: it wants merely the product given to them. It proposes, instead, to put the capital in the hands of the politicians, and have them give the shiftless an even share of the product—so far as the politicians make any—and do not keep it for themselves. That would at least divide up among the poor the profits now wasted by the rich, *if* the politicians were honest, and *if* the profits were to be produced. But as profits depend on Ability, and Ability needs them to stimulate it, if you take them away from Ability, to divide up among those who lack Ability, it is pretty hard to see who is going to produce them. But at least every-

body would get wages: there would be no unemployed.

236 (a). Wages could not rise.

But nobody would get as much wages as now. As soon as Ability flags, demand for the labor for which Ability finds work, must flag, and wages must fall; invention must flag; production must flag, and the world must grow poorer.

If government is to keep the demand for labor constant, the question is: who is to pay it from decreased production?

Ability might be stimulated to increase production by giving it high office in superintending government industries, but to only a limited extent in

236 (b). Impracticality of political management.

any condition can we foresee, and for two good reasons. We now seldom pay government officers salaries that honest men, unless already well off, can afford to accept; and as long as the base and ignorant are permitted to vote, and so often elect the base and ignorant to office, the best men could not be put in office as often as necessary, even if we were wise enough to pay them properly. So far, even those who can afford it, do not always take office when it is offered them, because of the humiliating obligations to the bosses that office sometimes imposes. The great difficulty even now is to get government officers who can and will do even the simplest things honestly: it is one of our great misfortunes that the men capable of guiding industry cannot often enough be got into public office of any kind.

If, then, we had to depend for the good conduct of all our industries, on the combinations of circumstances where good men can get office and will take it, those com-

236 (c). Losses to education, charity and liberty. binations so seldom occur, that, altho there are many good and patriotic men in

office, too often, instead of having the best brains competing with each other, as now, to supply our wants cheaply and in great variety, we should have to put up with what men capable only in politics, might provide.

There is nothing in the socialist argument that because government already secures (if it does) fairly compe-

tent managers for a few natural monopolies, it can secure them for productive industries, because monopolies yield results with much poorer management.

The same is true of the argument from government's securing more or less competent managers of education, including the museums, and gardens of botany and zoölogy. In fact, the managers have been very seldom secured by any pure democracy—especially by ours, which has no aristocratic traditions. Our managers for such institutions are most all secured by close private corporations, and no such managers aim at cheap production, or even great financial results for themselves: they do their work mainly from love of it and for personal development.

236 (d). Forcing Ability. One of the schemes of socialism is to force ability to guide labor, just as it is to force the laborers to work. But while a man can be forced to work in some sort of fashion with his body, there is no *forcing* him to do his best with his mind. He can only be tempted.

"Well, then", some socialists ask, "why not pay men of ability large incomes to serve the public?" But that they get large incomes now, is what most of the socialists complain of. Yet now the men of ability are not *sure* of the incomes; if they were sure of their incomes as salaries, they would no longer have a stimulus to do their best. Yet to give them, instead of salaries, large, but necessarily uncertain, shares of production, would be to give them just what they are getting now, and just what the socialists want to take away from them. Should real socialism come in then, it can only come in by reducing the production of Ability.

236 (e). The argument from experience. In answer to this, it may be urged that government has already been building houses for the poor, supplying them with water and light, and making boots and clothes for armies at a saving; that a great many people sadly lack these good things and most others; and that all the things made by private enterprise are often made at wages that

afford but little comfort. But what has been done in housebuilding and gas and even water, has not yet been shown to have been successfully done. We must not forget that agitation has already been strong in England —the very headquarters of "municipal trading", to drive government back toward its old functions of protecting rights.

236 (f). Can be undertaken when government is its own customer. When things have been supplied by government for the army and navy, and (tho in a less degree) in the case of gas and electric light, there was a certainty of

the customer. The government stood ready to take the clothes for the army and the light for the streets; and the producer made army and navy supplies only to the government's order. There was no call for some of the rarest and most difficult powers of Ability —finding custom, avoiding bad debts, and anticipating just what and just how much the market is going to require. True, if nobody but the government produced anything for the people, government would be sure of its customers. But no more customers would have the money to pay then than now, and those having it might like a choice of shops, and even of articles. They might not like to dress in Tammany style. Besides, we do not all dress in uniform, and it is only in uniform that government has yet succeeded as a tailor.

236 (g). Private initiative essential to variety. The government could of course have a great many shops and styles, but if they

were all under the management of Tammany Hall, they would be apt to be the sort of shops that prudent people avoid; and altho the government officers would not nominally be conducting the shops for their own profit, and tho some really might not, we know from experience that too many would.

Government could still leave the private shops open, but only if it courted failure. Managers chosen by Nature to control political pulls, could never compete with those chosen by Nature to manage industry. There is no argument that they could, in the fact that government railways and tramways are often operated

side by side with private ones: for all have monopolies of their own routes. To succeed in competitive business,

236 (h), General government production attacks Property, Contract and Charity. government would have to take away the citizen's power to purchase anywhere he pleased, just as the extreme municipal traders are beginning to do in England now.

This would not only deprive him of the benefits of Competition, but of two other institutions that men have been laboring upon through all civilization, and upon which, in fact, all civilization rests: I mean Private Property and Contract. With them would go production itself, all education of a higher grade than government provides, and the very possibility of charity.

The scheme would upset the institution of Private Property, because private property is simply one of the consequences of ability. Other things even, a man will have as much of one as of the other; tho of course other things are not always even, because an able man may deliberately devote his abilities to something that he knows will not pay much, and sometimes "accidents" come in. Still, any system that denies ability free swing, at once attacks the right to create property.

The system would attack Contract, because if the state is the only employer of Capital, Ability and Labor, of course any one of them has to accept what employment the state gives, on the state's own terms. No one of them has any more opportunity to contract, on terms satisfactory to itself, than the veriest slave born to remain in his status.

The scheme attacks Charity, those who advocate it would say, by doing away with all needs of charity; but those who oppose it say that there would be more need of charity than now, because there would be less production; and there would be no surplus of wealth in anybody's hands to be willingly spared for charities and the higher education. The idea that people with the moderate incomes that all would then have, would consent to be taxed for such things, is of course advanced, but is too absurd to be worth discussing.

236 (I). Futility of attempting it by eminent domain. If government paid in bonds for the present means of production (there is not

money enough to pay), bonds must bear interest, and even if government management should produce the interest (which it probably would not), where would be the gain in government simply working the industries, and paying away all the production above wages (if any), in the form of interest on the bonds, to the same people who now work out the interest for themselves? Of course people generally would then

236 (J). Effect on laborers. get all that the industries might produce over and above the interest on the bonds,

but after wages and interest were paid (assuming that they would be paid), the surplus would not be enough to be worth considering. The wealth that the socialists are after could not reach them in that way any more than it does now: for the simple reason that no more would be produced than now (if as much), and, as the census reports of present industries show, even if production were kept up to the present standard, an even division would not yield an average of much more than two dollars a day for each wage-earner, even putting the managers and their shares in with the rest.

But advocates of the scheme say there would be more, because they think that under socialism, most men, having so much more interest in the production, would work that much the harder. But there seem

236 (K). A premium on laziness. to be a good many men who, if they were sure of sharing the product, as in the

Paris public shops, and under the English poor law (34), would not work at all. Unless a boss has the power of discharge, it is hard to see who is effectively to tell the workman what to do to make his work count.

In Paris the government officers did not have the power of discharge, but if they have, what becomes of the socialism? Men could not be forced to work productively, and even if that were possible, it would be only by bringing the free citizen back under the slave's lash.

236 (1). Would destroy freedom. Moreover, government would have to tell people how and when they should work—a man would no longer be able to choose where he should work and what he should work at, and what he should take for his work, nor where he should buy and of what producer he should buy: for there would be but one producer—the enormous government trust. The whole thing would be a slavery more minute than any yet devised. There is no control as senseless as that of a majority. The scheme of socialism is that each shall be the slave of all: this in spite of the fact that civilization had been made by able men choosing work, doing it, and directing it, in their own interest. Even if they have had to direct slaves, it was the masters who made the civilization, not the slaves. True, the laborers in Greece and Rome were slaves, and those countries managed to cut a very decent figure, but the *voters* were not slaves.

236 (m). The unemployed. But in our present state, socialism is counted upon to dispose of the terrible question of the unemployed, and to give everybody good wages, but many people have not the ability to earn good wages. Then the socialists ask: why not have government give good wages anyhow? You admit that government should promote the general convenience in many ways: why not in the most important way of all—give what it has become the fashion to call a "living wage"? Ought not everybody to have a decent living? Yes, if he can earn it; and of course everybody ought to be able to earn a decent living, just as everybody ought to be decent. But unfortunately, not everybody is; and we have already seen the effect of the attempt to give everybody decent wages, under the English poor law, and in the French public workshops (34). It is better a thousand times to receive charity direct than disguised as unearned wages. That step would fatally lower the standard of industry and—what is far worse—the standard of morality: one is frank mendicancy, the other is disguised robbery.

237. **Names Socialism and Individualism.** Enthusiasts for any specific panacea naturally invent a name for it, and then gravitate into some one name for all methods outside of it. As soon as the two names are contrasted, they give an impression of equal weight in the respective ideas which they connote. But this impression is very misleading. Thus while the disciples of Hahnemann (if there are any real "high dilutionists" left) apply the term homeopathy to their doctrine, in the apparently balanced term allopathy they include all the doctrines that have been accumulated outside of their own. On one side, the word homeopathy includes only one idea on the subject; but on the other side, the word allopathy includes all the experience of the human race. The same is true of the words socialism and individualism. To the superficial, they appear to represent two ideas that balance each other; but the fact is that socialism expresses a mere theory, and represents no experience whatever; while individualism stands for the whole of human experience on the subject. Socialism has never been tried, all the progress of mankind has been made under "individualism". Greater and faster progress *may* be possible under socialism, as it *may* be under any scheme that any theorist proposes; but there is no experience to prove that it will be, while every atom of experience so far, goes to prove that it will not. It must be conceded, however, that the proof is not absolutely conclusive, any more than is the proof that two and two will not sometime make five, or that men will not sometime live forever. It may even be farther conceded that in vast periods of time, there may be possible changes in human nature that may make socialism possible. There are even some grounds for conceding that there are visible factors working in the direction of such changes in human nature, and this concession may be made even in face of the facts that while these words are being written, the New York papers hold circus advertisements attracting people to see a young woman and an automobile turning somersaults in the

air, the attractions of the performance being enhanced by calling it "The Dip of Death". But no more than all this can reasonably be conceded, and even these concessions leave no room to think of socialism as workable under any conditions so near as to be of any practical interest to any living man.

There have been a considerable number of people, from Ruskin and Tolstoy down, whose emotion and imagination are far in excess of their information and reflection, and who jump in fancy to the realization of the socialistic dreams, without studying what foundation Nature has provided for them; or if a foundation is possible, how long must be taken to evolve it.

This word socialism has lately come into
237 (a). Socialism
a vague name. such very frequent use (and abuse) that it calls for a little more consideration. In

a long-past-midnight discussion between the present writer and an eminent professor of sociology, and an eminent speculative writer on utopias, the last two of whom call themselves socialists, all three found themselves agreed that government ownership of monopoly franchises, and regulation of their operation by lessees for limited terms, is all that can reasonably be advocated under present conditions. The two "socialists" then claimed that their interlocutor, in agreeing with them, admitted himself a socialist. His counterclaim was that they, in agreeing with him, proved themselves *not* to be socialists; whereupon the two agreed between themselves that they needed a new word to indicate their real position; and an ineffective resort was made to the Greek dictionaries. If new labels are to be found for all the different positions held by those now included under the label socialism, all the dictionaries will be worked pretty hard; and probably names for the modern ideas will have to be constructed from the modern languages.

The fact is that the word socialism is now made to do duty for nearly every hoped-for cure of the defects of society—indeed for nearly every dream, how-

ever wild, of better conditions. Nearly every uneducated or unevenly educated person who is dissatisfied with existing conditions, calls himself a socialist, and many call themselves so on account of some opinion that may be anywhere from a belief that poverty is a bad thing, up to a conviction that if the state owned and administered all the means of production, poverty would disappear. Between the extreme positions, are at least the following stopping-places, *some* of the occupants of any one of which, like to call themselves socialists, and discriminating labels for each of which may be desirable: I. The state should regulate much ^{237 (b). At least three meanings.} more thoroughly the use of all natural monopolies, including the municipal franchises—waterworks, trolleys, lighting plants, etc. II. Municipalities should not part with the fees of their franchises for these things, but only lease them, so as to control them more effectively, and get the benefit of the unearned increment. III. Municipalities—or the state—or the nation, should operate the franchises as well as own them. Now many men who hold the doctrines up to this point, would warmly disclaim the name of socialist, and probably very few persons entitled to speak with authority would apply that name to any step short of government going beyond the farthest of these points, to a fourth—beyond the natural monopolies, and appropriating the means of production which are not naturally monopolistic.

^{238. Socialism against competition.} In this fourth use of the term, socialism means taking out of the fields of competition the things wherein competition is possible—depriving the world of the initiative and energy that competition breeds—of what has been well called “the life of trade”. While up to this point, government activity certainly should increase with government ability—in other words, with political intelligence and morality, beyond this point government interference with what we ordinarily mean by “industries”, would be interference with what has raised society above the stage of mere militarism.

To the claim that socialism could have raised society, and have raised it better,
^{239. All experience for Individualism.}

one answer is that it never did; and another answer is that no considerable body of professed socialists have ever agreed on the details for working out any consistent scheme by which they themselves claim that it ever could. On the contrary, they are always quarreling among themselves. Moreover, there is no reasonable doubt that the best results of what various men claim could be attained by the variety of schemes which they call socialism, are being more and more attained through the only process of which the world has had experience—through individual capacity competing for private property, and voluntarily applying an increased portion of private property toward the results that all good socialists and all good men desire.

^{240. Socialism and Magic an illustration.} Most of the people who believe in socialism (whatever they may mean by it) attribute to it the power to produce these results by some sort of magic. For instance, after the San Francisco earthquake, the *New York Times* contained the following interesting letter:

HOW EARTHQUAKES AND FIRES WOULD LOSE THEIR TERROR UNDER SOCIALISM.

To the Editor of The New York Times:

In the first place such a horror would not be possible under established Socialism, for every building constructed by and for a socialist system of society would be fire-proof, and in a great measure earthquake-proof. Cheap, flimsy, crowded, inflammable, and unsafe constructions would find no place in a city built for use and not for profit.

Given, however, present conditions, but with Socialism just adopted as a National system, the disaster at San Francisco, aside from the irreparable loss of life, would simply mean that each of us throughout the co-operated Nation had suffered a loss equivalent to a few hours of our productive labor. The whole resource and energy of the Nation would be aroused to replace San Francisco in a grander, more beautiful condition than ever before. The haunting fear of want that now oppresses thousands that were accounted well-to-do citizens would not be present. Thousands whose lives are shipwrecked by this calamity, and whom the most generous aid possible under

capitalism cannot restore to hope and happiness, would, in a few weeks, recover their full former condition. With hope assured, they would rebuild their city on lines of beauty and safety, drawing on the surplus wealth of the co-operated Nation for all labor and materials required. In that new city none of the dives, traps, or squalid quarters which are now wiped out would ever be replaced. With no incentive for greed, graft or unjust gain the city of the Golden Gate would arise the gem of the Pacific Coast. The temporary loss, in all except the loss of life, would result in lasting gain by affording the opportunity to build the City Beautiful. Private land titles would not obstruct the public welfare, and the lesson would be worth all the fearful cost. Capitalism, with all its generous impulses, now temporarily aroused, cannot succeed as Socialism would do.

This is a wider extension of socialism than I remember seeing proposed before. All the earlier propositions that I have seen, seem to have indicated that all the property of relatively small communities—states at the utmost, should be owned by all the citizens in common, irrespective of who devises it, produces it, or preserves it. There seem to be fatal objections to even that scheme, among them its mad injustice; but the objections do not appear to have deterred this writer from proposing to have all the property in America owned collectively by all the people in America—a scheme that would involve difficulties of administration so far beyond any now faced, as to be simply unimaginable.

241. Present
agencies toward
same ends.

Possibly the writer did not realize how far, under the despised agencies now at work, the losses of San Francisco actually are distributed. For instance, not to speak of the subscriptions for relief, eighteen millions of the losses are to be paid by insurance companies in the little city of Hartford alone. And the stock of those companies is by no means all owned in Hartford, but is distributed through the whole country. Considerable of the insurance thus distributed is in England: so the socialist's dream of our all being "members of one another" is already realized through the sordid channels of self-interest, more widely even than in his dream: for that

stopped at the borders of our own land. Moreover, such sharing of each other's losses—and gains too, is constantly increasing.

Yet his completed picture is at least a beautiful one. No one can doubt that the results of his prophecies are desirable, but how are they to be attained any faster than we are slowly approaching them now? The only indication given in the letter is that "socialism" should be "adopted as a national system"—apparently that Congress should pass some sort of a law, or that some sort of a constitutional amendment should be passed, to the effect that everything shall be owned by everybody, share and share alike; and that everything shall be done for everybody by everybody else, combined as the state; and that nobody shall have anything or do anything for his selfish self alone. When this law or constitutional amendment is passed, nobody shall be selfish or grasping, or inclined to hide away anything, or do scamped work, or disobey any laws that may thereafter be enacted.

Then the men with capacity enough to direct building operations, will be made more honest and capable by depriving them of their property and rewards, and paying them the same that the men they direct are paid. They are going to be more careful, energetic, resourceful—in short, build better buildings, because they can get no direct benefit from building better buildings.

Some people who call themselves socialists would say: "Oh no! They must be paid in proportion to what they accomplish." But that is just what the world has been trying to bring about for several thousands of years, and has come a great deal nearer to bringing about during the past century or two than ever before; and it is just what nine hundred and ninety-nine "socialists" in a thousand do *not* want: they want everybody paid the same, no matter what each accomplishes.

We already have laws in most cities
242. ^{No magic in} laws and names. for moderately secure building; but in spite of them, much crazy building goes on. But our socialist seems to think that if we pass a law

requiring many times the care from builders that is anywhere required now, if we will merely include it with a lot of other laws under the label "socialism", people are going to obey the laws better; and that if these laws remove all reward of care, such laws will secure the care.

Or can our writer intend to go so far as to imply that if the wisdom of Leland Stanford and his trustees had been replaced by that of the average building commission which universal suffrage would provide; and if the name socialistic were given to such commission, it would turn out better work than Stanford and his trustees did.

After the great Baltimore fire, wise and generous people hoped to "rebuild their city on lines of beauty and safety", but the majority, who consisted of stupid and selfish people, prevented all but a moiety of the schemes from being carried out. Now it would be interesting to know how long, on an average, the socialists think it would take the stupid and selfish people who constitute the majority of the inhabitants of San Francisco and of all other places yet discovered outside of socialistic dreams, to pass a set of laws, even under the label of socialism, that would really "rebuild their city on lines of beauty and safety" more effectually than it is going to be built under present laws; and how much longer it would take them to get the laws carried out after they had passed them.

All the ingenuity and morality that San Francisco has been able to muster, have been trying for half a century to get rid of the city's "dives, traps and squalid quarters"; but Chinatown has gone on burrowing under itself, and then under its burrows.

"And there would be no incentive for greed, graft and unjust gain", says our prophet under the inspiration of socialism. All over the world, since even long before Christianity came, good men have been legislating against "greed, graft and unjust gain", but these things continue. If the ingenuity and morality that have been fighting them, had labeled their efforts socialism, would they have had an access of magic

power? Or would they have had to change the character of their efforts? If so, why didn't they? Because they had not *enough* wisdom or conscience? How long then will it take to acquire enough wisdom and conscience to work socialism, assuming that enough of both may sometime be within human attainment? And by what methods are the wisdom and conscience to be attained, other than the preaching, teaching and general discipline of life, that have given us our present modest supply of those desirable qualities. Would labeling ourselves socialists create them? Would the label be more effective than the label "Christian" has so far been? Would the label give "Capitalism with all its generous impulses, now temporarily aroused", a more chronic amenability to those influences? And could the label be effectively put on "Capitalism", if by that word is meant the capacity which accumulates capital, without materially impairing its effectiveness?

In short, is the word socialism as used in the letter, anything more than a name for a dream so far beyond any means of realization, as to make it of no interest, except as an ideal, to any living being; and a dream, like most dreams, full of inconsistencies that make it only dreamable—not thinkable?

243. Another specimen.

It may be worth while to spend a few minutes with one more of the latest of these philosophers.* He sums up his preface by asserting that the capitalist must learn that socialism "demands the right, nothing more or less than the right". As if the problem of the ages, only gradually approaching solution, and never quite to reach it, were not simply what *is* "the right"!

He says: "The gateway of opportunity has been closed, and closed for all time. Rockefeller has shut the door on oil . . . and Carnegie on steel." As if these two men had not probably set more young men on their feet than any two men in history!

* Jack London: *War of the Classes*.

He says: "The proletariat will possess itself of the government . . . and run the business of the country in its own interest." As if one man in a score could run business at all, and as if he would not keep a reasonably careful eye on his own interest rather than that of the country!

He says: "The working-class is no longer losing its strongest and most capable members. There men denied room for their ambition in the capitalist ranks remain to be the leaders of the workers." As if the leaders of the capitalists were not now more from the working-class than ever before!

He farther says: "Either the functions of private corporations will increase till they absorb the central government, or the functions of government will increase till it absorbs the corporations." Either the inroads of the sea will increase till it covers the land, or the waste from the land will increase till it fills up the sea. Both sets of propositions seem to mean something, but, like the phrase of the irresistible ball striking the impenetrable wall, they mean nothing.

244. Need and
Desert.

A favorite expression of the ideals of socialism is: "From each according to his ability, to each according to his need"; and if desert were generally measured by need, a beautiful expression it would be. But the melancholy fact is that, despite many exceptions, desert generally varies inversely as need—the deserving are not *generally* needy, and the needy are not *generally* deserving. Change the expression to "From each according to his ability, to each according to his desert", and you have a very intelligible and respectable ideal, and one toward which all the ages have been stumbling, and toward which every wise philanthropy, every good law, every enlarged communication, every facilitation of supply and demand meeting each other, every honest trade and every honest job, are leading up; and from which every enervating and confusing dream, every disguised robbery, every pauperizing charity, every unworkable

statute, every obstruction of demand and supply, every dishonest trade and every scamped job, are keeping us back.

Try to reach the ideal by any shorter cut, try to determine each man's desert by anything but the results of his efforts, and who is to make the decision—a committee of Tammany Hall, or of a legislature, or of Congress, or of the labor trusts, or of the capital trusts? In regard to the very needy, it has long been attempted by government charity, by hospital and prison boards, by committees of churches, and by charity organizations. So far it has been very imperfectly done, but no man has yet proposed any hopeful organization for doing it faster. It is going to be done better—imperceptibly better to-morrow than to-day, a trifle better next week than this week, perceptibly better the next decade than this decade, and noticeably better—better with even a much greater difference, this century than the last century; as it was vastly better the last century than the century before. And all this betterment is to come from improvement in the agencies we know, and from better ones evolved from them. But it is to be less rather than greater, because of all revolutions attempted by unreasoning sentimentality, and rallied under phrases that inflame the imagination, but fall to pieces when searched for coherent meanings or practical policies.

245. High-pressure progress. Regarding the attempt to give government more to do, the socialist says that the old ship of state under the orthodox sixty pounds of steam, is carrying us forward too slowly—that it is but mathematics that if we square the pressure, we will double the speed. Give her 3,600 pounds, and we shall go forty miles an hour where we now go twenty. The sober student says that long before we get up to 3,600 pounds, the whole thing will be blown to flinders. And while the socialist is dancing around and calling for his 3,600 pounds of steam, the inventor and educator and sane philanthropist are evolving a quadruple-expansion engine to take us the forty miles. But the old

ship of state is not built for speed: she is a burden-carrier, loaded down with the faults and imperfections of the average man.

^{246. Socialism, when possible, will be needless.} Apparently, the only way of making the socialist scheme work, is making voters so intelligent that they will elect only the best men, and making the best men so unselfish that they will work for others as well as they work for themselves. On that basis, as it has taken some ten thousand years of recorded history to get us up to the present Senate of the United States, possibly ten thousand more might give us a governing body that could work socialism, but when people are able to work socialism, they will be able to take care of themselves without it.

^{247. The web of civilization.} Human affairs are so involved with each other that Spencer very justly compares them to a web. You cannot lift a single

strand without power enough to lift the adjoining strands; and you cannot lift a strand very far, without power enough to lift the whole with that strand.

CHAPTER XX.

PERSONAL PROPERTY (CONTINUED).

Schemes for Distributing it more Evenly (Continued).

(III) *Trade-union Coercion.*

In times of peace, the forefront of politics is apt to be occupied by schemes of magic betterment. Socialism and the schemes springing from trade-unionism are now competing for that position. It is not practicable to give the former any farther treatment here. Regarding the latter, of all the impracticable schemes for equalizing the distribution of production, the one which is now probably deluding more people than all others, is Labor-Union Coercion to raise wages higher than the demand for goods and services will pay.

As justice can be reached only through
248. Corner of supply of labor. the natural flow of supply and demand, to obstruct either by any sort of coercion, is to go counter to natural law, and going counter to natural law is one of the best definitions of immorality. But tho this principle is very simple, the application of it is often far from simple: every event is the result of many forces, and it is seldom that one force can be justly considered without reference to the rest. There is nothing more in accord with natural law than respect for life, and yet often respect for natural laws, involves disregarding life. For instance: regard for one's own life often calls for disregard for the life of another. So circumstances sometimes arise when

morality requires a disregard of the natural flow of supply and demand. But those circumstances are probably all exceptional and abnormal. At the time of the San Francisco earthquake, the equation of supply and demand would often have required prices for food and water that even the consciences of the sellers would not permit. In that case, however, and in most similar cases, the short supply and the excessive demand did not result from human volition; and in the case of taking another's life to defend one's own, the conjuncture does not result from the volition of the person taking the extreme course. Indeed, it is probably safe to say that all situations which justify action that is ordinarily reprehensible, are forced upon the actor by outside conditions—usually by the reprehensible conduct of another. On this principle it is probably true

that action counter to the natural flow of
248 (a). *Justifiable*
only in self-defence. supply and demand is sometimes justifiable,
but only when some natural catastrophe
has already interfered, or when some unwarrantable act
of man has made the case one of self-defence.

Ordinarily justice can float in only on
249. *Demand and*
supply in labor. fluid competition, and until both sides promote fluid competition instead of obstructing it, justice will be impeded. Some employers try artificially to increase the supply of labor by making a given amount of money pay so large a number of men that they cannot have needed food and comfort, and by getting men to work so many hours that they cannot have needed rest and recreation. Trade-unions came into being to artificially limit the supply of labor, as a defence against such employers. But having found that sometimes wages can be increased, hours shortened, and conditions improved by strikes, the unionists have jumped to the false conclusion that they generally can, and have gone on striking in season and out of season, until lately they have lost more from idleness during strikes than they have gained between them. They have at the same time made serious inroads on the capital of the employers from which their wages come, and on the

capital of the community which calls for their work.

They have also reasoned that, as a strike, to be efficient, must be close, it is justifiable to bring outsiders into the union by any means whatever.

The idea regarding wages is a fallacy, and that regarding coercion of non-unionists is a mistaken and immoral assumption.

250. Wages necessarily limited (a). by demand for product, As wages are represented in cost of product, they cannot go higher than the community is willing to pay. Neither can they be materially raised by diminishing capital's share of product: for the capital in any trade made unprofitable by excessive wages, would first seek a more profitable investment; failing that, a more profitable country; and failing that, would tend to be consumed, as not worth saving. In any one of the cases, wages cannot stay at a point where they drive capital out. So with Ability, if wages get too high to leave Ability's profits in proportion to its degree, it will forsake the industry, and the laborers will be "out of work".

250 (b). by competition. The attempt to raise wages above the normal can only succeed, even for a time, for but a part of the men, and must leave some unemployed. As Professor Laughlin well said in an address before the Citizens' Industrial Association of America:

"It means always and inevitably, the existence of non-union men, against whom the unions must constantly wage war. Under this system, high wages for some within a union can be maintained only by the sacrifice of others without the union. In short, the union scale of wages can be kept only by driving all other competitors from the field. The monopoly is only artificial, not real. . . .

"But if all laborers were unionists, the situation would be the same, as regards supply, as if there were no unions. . . . Then the rate of wages for all in any one occupation can never be more than that rate which will warrant the employment of all—that is, the market rate. . . .

"Obviously the union rate can be maintained only by limiting the supply of labor to members of the union and by driving out the non-union competitors. Consequently, the inevitable

outcome of the present policy of many labor organizations, is lawlessness, and an array of power against the State. Having only an artificial monopoly of labor, their purposes can be successfully carried out only by force and intimidation."

250 (c). by invention. Moreover, high wages tempt to labor-saving invention. This is well illustrated by the discovery of the New York bricklayers in the summer of 1905, that the substitution of concrete for bricks was taking away their means of livelihood. These bricklayers had one of the strongest of unions, and had driven their nominal wages up to four or five dollars a day. Their real wages for a year or two had not been much over half their nominal ones: for the nominal ones had been obtained through the notorious building strikes with their accompanying idleness. In the spring of 1905, after the city's long deprivation of builders, the demand for them was ravenous, and the bricklayers expected a season of unprecedented prosperity. But paying high wages had set builders to experimenting, and to discovering that a dollar-and-a-half laborer with a supply of cement and small stone, could mix and pour into moulds more wall in a day than a five-dollar laborer could lay with bricks.

Invention, then, puts a limit to possible wages, as effectually as does the choking of demand that high wages must cause, or the competition of labor attracted from trades where wages are lower. The disregard of these unescapable facts by the unions has cost them dearly.

Yet the unionists may acknowledge the force of what has been said, and still doubt if they have at the time reached the possible limit of wages. They are doubly ready to doubt it when they consider the wealth in other hands; and as they are not inclined to the slow and arduous ways that placed it there, and do not often possess the ability to take those ways, they are naturally prone to the strike. But of late they have so often exercised it only to demonstrate its fallacy—to reach through times of privation a scale of wages so high that the public will not pay it—that they must be getting some inkling that the method is fallacious.

The other assumption of the unions—
251. ~~False justifications for coercion~~ that any method—picket, boycott, violence, murder, is justifiable to keep the union close, hardly requires discussion. The few who support it on any basis of professed reasoning, assume that, as the state holds the property and even the life of the citizen subject to sacrifice for the greatest good of the greatest number, the trade has the same moral right over each of its members. The alleged justification—offered in various forms—for these attempted infringements on liberty, is the greatest good of the greatest number, but at best that can only mean of "the greatest number" in the trade in question; and their good is avowedly sought through prices enhanced at the expense of the greatest number of the community (258 a). Here should be most carefully and thoroughly realized, what was briefly touched upon before: first, that the principle of "the greatest good of the greatest number" can be applied only to actually "the greatest number"—the whole community—which the greatest number of a minor section can never be; and, second, that the ascertainment and securing of what is the greatest good of the greatest number, tho it has taxed all the wisdom of all the ages, has even yet been only approximately attained; and that so far as it has been attained, it is expressed in the existing body of laws made by all for all.

252. Aimed against laborer, employer, and public. So much for the principles involved. Now to come to details. Trade-union coercion is threefold: It is directed primarily against the enterpriser, through strikes and boycotts; but secondarily against the laborer, to prevent his giving the benefit of competition to the enterpriser, or incidentally to himself when he happens to be unemployed: the union wants nobody competing with it, and therefore tries coercion to get all men to belong to it, and to stand idle when it is idle. And third, the coercion is directed against the public—to compel public opinion to endorse labor's contentions, by stopping transit, coal supplies, food supplies, and other necessities and conveniences.

253. Coercing the
employer.

As to coercing the employer: the time during which the laborer can stand idle without a loss that is serious or fatal, is much shorter than the time during which the enterpriser can—the laborer cannot afford to wait for a good bargain, while the enterpriser can. The union therefore tries to increase the laborer's ability to wait, and to diminish the employer's ability to wait. This is often done by making the settlement of a difference depend not on the employer doing without the laborer with whom he differs, but doing without any laborers at all.

Now there can be no objection to any peaceable efforts necessary to secure to labor the full benefit of the natural demand for labor. They become objectionable only when they deprive the employer of the full benefit of the natural supply. If a laborer thinks that demand for labor justifies higher wages, it is perfectly legitimate to test the question by leaving the work, and seeing if the place can be filled at the

254. The Strike. price. But when the test is attempted

by all the men stopping work together, it is not made by the natural flow of supply and demand: the natural flow would be for each man to take work elsewhere, when tempted by a natural demand in the shape of higher wages elsewhere. This would not involve stoppage of the business: the question could thus be tested without shock or material loss on either side.

But there are obstacles to this ideal test, obstacles often so great as a change of the laborer's residence. These obstacles would prevent his getting higher wages elsewhere, unless the wages were enough higher to justify the expense and inconvenience of whatever change might be involved. This expense and inconvenience may readily be greater than would be involved in a strike, and the laborer's rights might be better conserved by waiting until enough men were discontented to unite in a strike. But not only is the strike against whatever rights the employer may have to get the question of higher wages settled gradually without stopping his works, but strikes are in many instances,

perhaps in most, forced by a minority, or undertaken by men who are not discontented, but who only act in sympathy with a strike elsewhere.

Conversely, the employer cannot be expected to carry on work at prices that are not profitable, and an entire stoppage of the works may be as much to his interest sometimes, as at other times a strike may be to the interest of the men. But ordinarily it would be in the course of nature for him to try to reach a lower scale of wages gradually, rather than proceed to a lockout, and both incur idleness himself, and deprive his men of their means of subsistence.

Thus in both directions, the rights of master and man often conflict. Men with reason and morals can generally settle their conflicts by discussion and compromise, but beasts can settle them only by war; war, however, is justifiable only as a last resort, and strikes and lockouts are war.

Lockouts, however, play but a small part in industrial troubles. The U. S. Bulletin of Labor for September, 1904, shows that from 1881 to 1900 inclusive, there were over twenty times as many strikes as lockouts, and the employers lost over five times as much by strikes as by lockouts. In the five years 1896-1900, the strikes increased to over thirty to one lockout; and the ratio of loss increased three and a half fold; tho if the years 1895-1899 were taken, it would show a fall in strikes to about fifteen to one lockout. In view of the facts, then, we may reasonably continue to confine our consideration to strikes.

In all the coercion, the justice of the case has been obscured by many things—most perhaps by what seem to be the plain facts that a man has a right to stop work when he pleases, and to buy or not buy where he pleases; and that what one man has a right to do, any number have a right to do together.

255. *Conspiring to stop work.* But in all strikes and boycotts there is more than the exercise of the mere right to stop work or stop buying. What leads to all the outrages is *conspiring to stop work or stop buying.*

Even granting to the individual the fullest right to do either, there still remains serious question of his right to enter into conspiracy with other men to do it together, when they unduly prejudice the rights of others—when, for instance, not to speak again of private wrongs, they bring an industry—especially a public utility, to a sudden and disastrous standstill.

Moreover, even leaving out the many cases when the men are ordered out against the real wish of the majority, or because some other men have struck, and considering only the cases where men strike because they really want to, does each man stop work when he pleases, or do the discontented stay at work after they have become discontented, in order that all may quit work together, to the greater inconvenience of the employer? Such a course is admittedly a conspiracy to injure the employer, and the right to take it is seriously questioned, even by the law. Similarly, of course, with the boycott coercion.

256. Other coor-
dclons.

Beginning with occasional and often entirely justifiable demands for higher wages and shorter hours, the unions have gradually added limitation of apprentices; limitation of a capable man's output to that of an incapable man; refusal to handle material from previous non-union producers, or material coming from other shops, or material not prepared in their own city, before they have duplicated it and destroyed the duplicate; and hosts of other regulations of their employers' business. The employers have yielded point by point until the demands have reached the logical conclusion of that for the "closed shop"—closed to all but union men, and that the foreman shall be a union man chosen by the men, instead of by the man who pays his wages.

In 1906 the Typothetæ of New York thus stated a situation that is by no means restricted to their trade:

"The employer cannot put his own son to work at the machinery in his own composing-room until that son, *after four years' probation*, swears allegiance to the union, subscribing to an oath that puts obedience to the union above his duty to

family, church or state. The employer cannot hire or discharge his own men; they must be hired or discharged by a foreman, who must himself be a member of the union. An employer cannot operate the keyboard of a machine that he has paid for, or set his own type; he is not allowed any representation in his own composing-room. The composing-room is controlled by a union foreman, assisted by a union chairman elected by union men, the chairman's duty being to see that neither the men nor the foreman shall for one moment forget any of the numerous restrictions which the union has placed on the running of the shop."

In the last analysis, the object of the unions has been to break down the laws protecting private property—factories, stores, mines, transportation agencies, in order that they, instead of its owners, may control it and derive from it what revenue they please. This, it need hardly be pointed out, is one of the forms of confiscation grouped under the general term Socialism. Even if they were to succeed in their contention, nothing can be more certain than that, if the property were without the guidance of the superior minds which created it, the returns from it would fall off, and the revenues to the workman would diminish, and in many cases—in all, if the principle were carried out to its logical conclusion—would cease altogether.

At this point, the employers have decided to resume control of their own businesses, and to run the "open shop"—shops open to whom they please to engage, on terms satisfactory to their own side as well as the other—and the parties are in the midst of a disastrous conflict. There can be but one end to such a conflict. Some weak employers in the printing trade have yielded for the moment, because they could not afford to stop work; but the strong ones are holding out simply because they must. The question is simply whether they shall control their businesses or give them up. The laborers cannot afford to have them given up.

257. Misleading statistics of strikes.

Most of the discussion of strikes in the later literature of the subject, of course ends with the census of 1900. Based on the facts up to that time, Professor Adams says:

"In the *Final Report of the Industrial Commission* (page 864) it is pointed out that although on the average of the twenty years 1881-1900, about 330,000 persons were thrown out of employment annually by strikes and lockouts, this number constituted only about 3.36 per cent. of the persons employed in industries affected by strikes. The actual time lost by strikers in this period amounted to about 194,000,000 days. However, 'spread over the whole period, this loss amounts to very much less than one day per year for each adult worker. In other words, the workmen of the United States have lost less time from strikes and lockouts than from the celebration of the Fourth of July or any other legal holiday....' Similarly, on the basis of the figures of the Department of Labor, Mr. Mitchell calculates that the immediate loss traceable to strikes amounts to only about 3 cents per month for each inhabitant."

Now the madness that ruled the unionist world from 1900, the last year considered in the foregoing paragraph, to 1906, when these words are written, would make that paragraph,* if applied to the more recent

* Professor Adams deduces from a table of strikes from 1881 to 1900 some conclusions that are strange to find in a book usually as reliable as his. One is that unionism has tended to lessen the number of strikes. In support of this he deduces the fact that in '86-'90 there were 4358 union strikes, while in '96 to 1900 there were but 4175. But I find that the same table shows that in '81-'90 there were 5669 strikes, which in '91-1900 rose to 8,788, and even that his five years '86-'90, containing 4,358 union strikes, were followed by five years, '91-'95, containing 4,613.

Moreover, in the two periods he selects, he compares the non-union strikes with the union strikes, with the showing that the union strikes decreased four per cent., while the non-union strikes increased ten per cent. But if he had taken the two decades that I have taken from the same table, these figures would have been that union strikes had *increased fifty-four per cent.* (instead of diminishing two per cent.), while non-union ones had increased but thirty-five per cent. Since 1900, the statistics are not available, but no observer can doubt that the facts have been even vastly more in the direction that my comparison of the two decades shows, or that the unions have fomented strikes to a degree that seems to mean nothing short of the madness of those whom the gods wish to destroy.

Of course it is not to be supposed that Professor Adams deliberately selected fractions of each decade which happened to support his theory, and yet a glance at his table reveals the showing of the whole twenty years to be startlingly counter to that of the two periods he has selected.

period, the wildest nonsense—a fact which it is important for writers to point out as long as current facts and previous facts continue in such direct contradiction—probably until the census of 1910 shows the conditions of the last six years, and, it is to be hoped, the subsidence of them. Favorable symptoms of the subsidence are the rise of the employers' unions and citizens' industrial unions, a great decrease of strikes since 1903, and the falling off, in 1904, of the membership of the trade-unions, which is not yet made up, despite the subsequent full employment and high wages.

258. Coercing the
laborer.

As to coercing the laborer: there is no question that the trade-union would be more efficient as a monopoly, and that it has a right to persuade men to make it a monopoly. But equally is there no question that it has no right to add violence or intimidation to persuasion, or that the unions have at last become so used to artificially limiting the supply of labor, have become such adepts in it, and have derived such advantages from it (tho largely illusive ones), that they have got in the way of doing it under unjustifiable circumstances, and by unjustifiable means.

Among the means, as already said, is the use of coercion to limit the number of apprentices. Such a policy, even among shipwrecked sailors struggling for a raft too small to hold them all, is not easily regarded with patience, and when it is persistently pursued by men already supplied with the necessities of life and not a few of its luxuries, its cruelty and selfishness are beyond excuse. Its absurdity is often on a par with them: for instance, in several trade-unions—notably in the typographical ones, it has now got to the point where a father cannot teach his trade to his son in his own shop, without the consent of the union; and it need hardly be pointed out that if limitations were practiced by all trades, more of the community would be reduced to the position of labor too unskilled to be organized—of that pitiable residuum

"the unemployed", which is drawn upon only when nothing better can be had.

On the other hand, some trades, as in the printers' strike of 1905-6, have forced employers to teach the trade to so many outsiders, that many of the strikers themselves, on wanting work after the strike has failed, find their trade overcrowded.

Appreciating the value of unity of action, whether the cause be right or wrong, the unions have stopped at no crime in the effort to secure it. Not content with the savagery of pushing apprentices off the raft, the unions are given to boycott, violence and murder, to coerce men to stop work against their will; and all these steps are habitual in quarrels not their own; and in strikes entered upon when the employers have done no wrong. The Chicago *Tribune* claims to have statistics showing that in the United States from 1894 to 1904 inclusive, there were three times as many murders committed in riots to coerce laborers, as in all other riots put together.

The unions have set no limits to the ends they hope to attain by coercion of laborers. Reason and justice require that, other things even, the lowest bidder should obtain work. The unions wish to eliminate all bidding among laborers. They have made the euphemism of "collective bargaining", and claimed a mass of virtues for it—correctly claimed, if their own side alone is to be considered. But no human ingenuity can extract from the phrase or the idea, anything but an absolutely close labor "trust": that is precisely what all trusts are made for—collective bargaining—eliminating individual competition. This is not saying, however, that trusts—whether labor trusts or capital trusts, necessarily merit condemnation; but it is characteristic of the low intelligence which must accompany low productive power, to exalt the labor trust while condemning the capital trust.

Each labor union is trying to form a trust controlling its branch of labor, and the American Federation of Labor is a trust trying to include them all. To deny

this would be so absurd that many of the members frankly confess it; and while other trusts have the decency at least to profess to *lower* prices, the members of the labor trusts all confess, at least indirectly, that their object is to *advance* prices. Few if any of them have the intelligence to realize that all labor trusts but each man's own, are advancing prices against *him*, and that even his own advances the price of such of its commodities as he uses. As so often said already: they do not think as far as their outgo, but only as far as their income. Their ideal "collective bargaining" is that there shall be but one bargainer on their side, and that the laborer shall be taken at his price or not at all, even if babes go without milk, and the whole community without meat and coal. While the unionists cry out most bitterly because the capital trust is only "one bargainer", while they are the most bitter denouncers of the capital trusts' destruction of competition in things which unionists realize that they themselves use, they are ready to override everything to destroy competition in labor. While they denounce the Standard Oil Company and the American Steel Company for absorbing outsiders through business competition, they themselves habitually try to absorb outsiders by the bludgeon.

In trying to limit the right to work and to contract—the right of demand to seek supply, and of supply to seek demand, in a free country, they are attempting an impossibility—without freedom to work, freedom to contract, and freedom to compete, no country can be free: the condition of the workman must be simply that of the slave, and the slave of the worst tyrant known—a wrong-headed majority.

259. Coercing
the public
The union label.

As to Coercing the Public, everybody knows illustrations enough, but some will help to a clearer understanding of the rights of the situation.

A scheme of the labor trust has been to coerce the public from buying any goods not bearing the union

label. It has tried the scheme in many ways calling for the same charity that we give to children when they do things whose enormity they do not realize. One is the ingenuous step of demanding legislation to enforce the scheme,—a step which no capital trust would be either so bold or so innocent as to attempt. Perhaps it was a step more ingenuous still, when a labor trust began interfering with education by notifying publishers that union influence would be used to drive out of the Boston schools any books that did not bear the union label. The tendency of such a policy is of course to lead people of independent spirit, wherever possible, to avoid using goods with the union label. I have even known a case where a person who responds with considerable freedom to circulars asking for aid for deserving charities, has ceased paying attention to those which bear the union label. To an obvious criticism, he responded that, whatever those bearing the union label might deserve, there were enough not bearing it, to justify concentrating on them all the money he could give.

And yet with all the claims for the union label, the highest New York court in 1906 would not sanction a requirement of it in the contract for the public printing of Onondaga County, pronounced the requirement "against public policy and unlawful", and said that "the Board with just as much propriety, so far as its legal right is concerned, might have permitted only Baptist or Unitarian printers to enter the bidding list". The decision is very full in citation of supporting cases.

The following paragraphs from the *New York Times* of May 12, 1906, may cast some farther light on the alleged right to coerce the public into endorsing a labor contention, by stopping work:

260. A second
Illustration.

"When the strike of the Funeral-Drivers' Union got under way yesterday, New York witnessed such scenes as the city never before saw.

"Several funerals were abandoned by strikers when the dead were between the church and the grave.

"Of 103 funerals that had been set for yesterday in the city only 23 were finished. The carriages of some of those were stoned by the strikers or their sympathizers.

"Farell's funeral was set for one o'clock. Several carriages and a hearse had been drawn up to the door, when a walking delegate from the union ordered the drivers to go back to the livery stable. They went back. Then came the news that the livery-stable owner had ten other funerals, and had been obliged to sign the agreement. The carriages returned to the house of mourning, but came back with flying colors. On the heads of the hearse-horses were two red, white and blue flags, and on the bridles of each of the carriage-horses tiny flags signified a victory for the funeral-drivers. The mourners protested, declaring that the funeral procession with the flags would look like a west-side chowder club. But with the union's flags flying at the heads of the hearse- and coach-horses the funeral went on to the cemetery."

In another case "The Rev. Father John C. Henry . . . was delivering a eulogy on the dead man when there was a commotion at the church door. . . . A committee from the striking union had called the driver of the hearse and ordered him to take his hearse back. . . . The coach-drivers were ordered back, too. Leaving the body and the mourners in the church, the hearse-driver and the coach-drivers drove away. The sexton . . . went about notifying the mourners of the situation and telling them to remain in their pews until matters could be straightened out. . . . The police reserves from two precincts were sent to see that the strikers did not again interfere with the funeral. Then Undertaker Hagan hitched one of Undertaker Slevin's horses to an undertaker's wagon, and returning placed the body in the wagon. The immediate relatives of the dead man accepted the offer of a private carriage that had taken a party to the funeral, and then followed the body to Calvary Cemetery. The rest of the mourners went to the cemetery in trolley cars, after this funeral had been held up for two hours.

"In another case, up in the Bronx, the body was put in a milk-wagon and driven to the cemetery, while the mourners rode in surreys and grocery wagons."

In another case "A large number of the striking funeral drivers assembled opposite the Ogle home at 8 o'clock. The police reserves were sent for, and drove the strikers away. . . . Four men appeared carrying the coffin on their shoulders and followed by the mourners, who walked.

"Dr. Guilfoyle granted an extension of the burial permit in the Weaver case, so that the body could be held at the house until to-day. The law forbids the holding of a body more than four days. . . . The Weaver family, like others in mourning for their dead, were compelled to sit up another night with their dead relative.

"The funeral of Antonio Le Grabier . . . was headed off by a committee of strikers, who ordered the hearse-driver and the coach-drivers to leave their seats. They pulled up, leaving the coaches and hearse in the roadway. . . ."

In another case "Striking drivers ran out and tried to drag Undertaker Lumoro from his seat on the hearse. Policeman Gleason, one of the guards, ran at the strikers with his club and drove them away. The funeral then proceeded, . . . but still followed by the mob of striking funeral drivers and their friends.

"At the ferry the mob threw sticks and stones at the hearse and coaches. The mourners climbed out of the carriages and took refuge in the ferry-house.

"A man asked Dr. Guilfoyle to hold the body of his child for another day. He said the child had died of measles, and that the undertaker told him the body would have to be taken to the cemetery in an express wagon.

"'My wife is very ill', he said, 'and she vows she will not permit anyone to place our child in an express wagon. If I can get a permit to hold the body for twenty-four hours more, it will be the means of probably saving the life of my sick wife.'

"Dr. Guilfoyle granted the permit.

"It was said at the Health Department that if an attempt is made to-day to hold up funerals the police will be called on to make arrests under Sections 314 and 315 of the Penal Code. Section 314 provides that any person who detains a dead human body on any demand is guilty of a misdemeanor. Section 315 says:

"'A person who, with or without authority of law, obstructs or detains any person engaged in carrying or accompanying the dead body of a human being to a place of burial is guilty of a misdemeanor.' . . .

"Dr. Guilfoyle said the strikers yesterday had held up the funeral of a person who died from diphtheria. This was a serious matter, he said, as the body had been held over the twenty-four-hour limit without the Health Department's permission."

^{261. The right to stop work.} The right to stop work! Has anybody a right to *anything* which will lead to such barbarities as these, or such as may be read of in connection with a large proportion of all strikes?

Undoubtedly, other things even, any man *has* a right to quit work when he pleases. But plainly there are cases where other things are *not* even. I cannot treat this important subject better than I have done else-

where,* and I will therefore use again the passages with slight modifications.

In any contract for work, even if terminable without notice, certain things which it is superfluous to express in the contract, are always understood. One of those things is that neither party shall wilfully use the relation between the two, to the damage of the other, or of anybody else. Nobody would say that a workman whose business it is to connect water- or gas-pipes has a right to quit work the moment he has tapped a main, without making his connection or stopping the leak; nobody would claim that a surgeon has the right to stop work after he has cut a man's leg off, before stopping the blood and putting the stump in order; nobody would claim, indeed, that an actor, having gathered his audience together, has a right to stop in the middle of the play, even if he returns half the entrance-money.

. . . No fair-minded person can fail to see that railway employees have no right to quit work while trains of passengers, animals, or perishable freight are likely to be delayed; and as the welfare of the whole community depends not only upon trains being carried to their destination, but upon their being regularly run at their usual intervals, it also follows from the same considerations, that no railway employee has a right to quit work under any ordinary circumstances without giving notice reasonably sufficient for the procuring of a substitute if one can be had, or for making some reasonable arrangement if one cannot. And in all cases, the laborer's right to stop work is limited by the rights of others to have their interests put in safe or reasonably complete condition before the laborer leaves them.

262. *The community's defence.* The parties to this question are no longer merely the employer, the striker, and the possible man glad to take his job, but there is a fourth man who is of vastly more importance and power than any of them, and who, as soon as he becomes fully

* "Sturmsee", third edition, pp. 409-12.

alive to his rights, is going to settle them in a way that will brook no cavil or resistance. This fourth man is the average citizen—agglomerated as the community at large. In the United States, he represents to-day over forty million adults (including his wife) and over eighty million people, including his children, whose milk supply (not to speak of the family food and fuel, and his convenience of passing between house and business) has been held up a little too often by the mere convenience or whim of some two million persons belonging to the trade-unions. If his rights had been violated because of the necessities of these people, or of crying injustice inflicted upon them, he would have felt sympathy and patience. But they have been too often held up, not by men quitting old jobs and seeking new ones, as discontent and opportunity arose, but by conspiracies, for poor reasons, to stop work and make others stop work, together.

There has been a principle upheld among Anglo-Saxon people for a good many hundred years, tho suffered to lapse into occasional desuetude, that men conspiring to do a thing unobjectionable if they do it separately, but working harm to the rights of another or of the community if they do it together, are guilty of a criminal act; and the community is rapidly being forced into a disposition to visit on such criminal acts, their proper penalties. The work has begun already.

263. Society
organizing
in self-defence.

The aggressions at last have forced combinations not only among the employers, but among new forces that are irresistible—those of the community in general. Few labor unions can see beyond their own ranks; they forget that their exactions must be met not merely by their employers, but by all who use the product, including even members of *other* unions.

In 1901 the first Employers' Association was formed in Dayton, Ohio. Before that time employers had quite generally sought to profit by each other's troubles, instead of uniting against all unjustifiable trouble.

In 1901, an Employers' Association was organized in Chicago, and many other cities soon followed suit.

About the same time street-car operatives had been making serious trouble in Montana, and miners doing the same in Colorado. Remembering the Vigilance Committee of San Francisco, the people organized similarly, many workmen, even, being on the side of law and order. Nearly four hundred of these associations have grown up and are now combined in the National Citizens' Industrial Association "for the protection of the common people", which publishes a valuable organ, "The Square Deal". It includes the National Association of Manufacturers, comprising some three thousand firms and corporations, whose organ is "American Industries"; and also the powerful "Anti-Boycott Association". Thus the intelligence, capital, and rights of citizenship of the country are at last arrayed against the excesses of the unions, and by organized appeal to the law, have obtained important decisions against them;* have prevented much class legislation; and are disseminating valuable education.

The National Association of Manufacturers has established free employment bureaus to give independent laborers work which strikers have refused.† The

* "In three fourths of the Chicago strikes, injunctions have been secured restraining strikers from interfering with non-union men, on the ground that it was a conspiracy to prevent work. Hence the anti-injunction bill which the American Federation of Labor has tried hard to put through Congress. This bill, in the opinion of Mr. James M. Beck, chief counsel of the American Anti-Boycott Association, 'legalized conspiracies' between unions, but made it impossible to enjoin them." (*From an article in the Chicago "World of To-Day" by Mr. Isaac F. Marcosson.*)

† "Nearly every strike ending in a victory for the open shop has been followed by the establishment of a labor bureau. The union men call it a black-list agency, because it keeps a check on a man's record. The National Metal Trades Association furnishes a good example. It runs open shops. Any man of good character wanting a job in the metal trades can apply there and in four out of five cases he secures work free of charge. The secretary investigates the man's record. All the facts about him are put on a card which is kept in a permanent card catalogue. In this way

employers' organizations, in nine tenths of the cases which they have taken up, have established the open shop, where the unions have tried to destroy it.

264. Educational Results. Great as has been the immediate economic value of all this experience, its educational value must be greater still. Both are indicated in the simple fact stated before, that while in 1903 there were in Chicago 1,300 strikes, in 1904 there were but 800. Unless all strikes are wise and justifiable, it is reasonable to presume that the falling off in 1904 was in the class of those that would not have been so, while the number that did take place is apparently large enough to include virtually all that could have been wise and justifiable; and more workmen are apparently learning not to strike wantonly, while they still retain the spirit to maintain their rights.

Thus the unionists may have lately begun to learn, that after all there is no more magic in coercion than there is in the other nostrums for getting much by the man who produces little; and they are learning it, as the uselessness of the other nostrums has had to be learned, at frightful cost to themselves and the community.

If more of such teaching is needed, it may get so far that the twenty million men who are not in the habit of striking, may outvote the two million who

the disturbers are kept out of the shops. Last year the Chicago labor bureau of the metal trades had 4,850 applicants and 3,000 men got jobs.

"Bureaus in different cities kept in touch with one another. If a man applying in Kansas City lies about the reason why he left a job there, he is sure to be found out if he applies in New York. If a strike is threatened, for instance in the New York metal trades, a central secretary can send a telegram to every labor-bureau secretary, asking him to rush men to New York. In twenty-four hours a hundred boiler-makers would be on their way from Kansas City, St. Louis, Chicago, Cincinnati, Philadelphia and a dozen other places.

"These bureaus have made leaders cautious about calling men out. Formerly they called a strike and then considered the grievance. Now they consider the grievance first." (*Marcosson, op. cit.*)

are. All strikes have been declared criminal by statute before now. Even in Australasia, "the Paradise of Labor", the mere attempt to foment one is subject to heavy penalties (291), and if the proportion of them which unquestionably are criminal even under our law, should again increase as rapidly as they were increasing before people began the checks just described, all strikes may be declared criminal again, and strikers reduced to depend only on verdicts of not guilty where the strike is justifiable, just as such verdicts are found in the rare cases where killing a human being is justifiable.

264 (a). The community's defence will defend the workman. Probably the workingman would be the gainer if they were. In the modern world, the undisturbed laws of competition would probably take better care of him, than, in his recent mad attempts to overcome those laws, and in his subservience to his walking delegates and Sam Parkses, he has succeeded in taking of himself. But probably he will not drive society to any such extreme. Other agencies are opposing his errors, and he is coming to recognize them and, it is to be hoped, to be the gainer in consequence.

If the justifiability of such strikes as those of the last few years had had to be passed upon by judges and juries, few of the hurtful strikes would have been undertaken, while the laborers would still have felt free to enter upon those deserving of public sympathy, and therefore likely to be of real use. If all unionists appreciated as well as those of Australasia seem to (278 a), the advantages sure to accrue to them from such legal regulation of strikes as would prevent the unjust and foolish ones—especially those incited for mere leaders' graft, the unionists would be the first to agitate for the growing improvements in the law.

The demagogues and corruptionists in the unions oppose arbitration agreements and all other means of avoiding strikes. On the other hand, nearly all the good and wise leaders, and there are many of them, do all they can to avoid strikes, as suicidal. Many honest but stupid men look upon the union as nothing

but a machine to strike with, while the fact is that some of the most successful unions, whose men actually receive far more than the average amount of wages, have seldom struck at all. Considering how the unions have lost wages and membership during the recent saturnalia of strikes, it is not unthinkable that unless the strikes disappear, the unions must. If they stick to their legitimate function—like that of the German army for the last thirty-five years—of powerful promoters of peace, letting all who would impose on the workingman know that they have not to deal with individuals, but with an army, not much imposition need be feared. They have rushed into their excesses because they had only individual employers and unprepared communities to impose upon. Now that the employers and the communities have begun to marshal *their* forces, the unions will soon find unjust aggression hopeless, but will receive all the more sympathy when their complaints are just.

CHAPTER XXI.

PERSONAL PROPERTY (CONTINUED).

Schemes for Distributing it more Evenly (Continued).

(IV) *Labor and the Law.*

I will now attempt to give some idea of the general attitude of the law regarding labor conspiracy and coercion.

Of the laws enacted by legislatures and ^{265. Natural Law and Civic Law.} pronounced by judges and by priests, such as work, are only statements of natural laws; and anybody trying to reform society by some fanciful scheme counter to natural law, will soon find himself in opposition to some law of the state rooted deep in human experience. The trade-unions are already in pronounced opposition to the laws of both Nature and the State, as is shown not only by individual violations of the law, but in the general attitude of the unions. To carry out their systems, they have found it necessary to exact from their members a pledge of fealty to the union superior to their fealty to church and state, to prohibit them from entering the militia which protects the established law, and to agitate for the abrogation of injunction, which is one of the most important features of the established law; they have procured the enactment of many impossible statutes, which are of course falling to pieces under the scrutiny of the courts; and they frequently publicly admit that they hold themselves superior to the law,

and that they cannot succeed without going beyond it. After President Roosevelt told the unionists at Chicago in 1905 that there would be no discrimination in favor of either side, the President of the Chicago Federation of Labor said: "The President deals a death-blow to organized labor . . . without discrimination, we are just where we started. What we have been fighting for is union labor to the exclusion of all others." In other words, they had been fighting to override the laws protecting the non-unionists' Right-to-Work, and every man's right to join the union or not at his free will. Their avowed and acted policy is that, if society will not see their most trivial demands granted, society shall suffer the most serious consequences. In short, just as the ignorant, seeking for shorter cuts to fortune than industry, frugality, inventiveness and the other effective sources of wealth, have lately tried, with conspicuous failure, to set aside the natural laws which control land, money and industry, so they are now attacking not only the statute laws which they themselves have approved, but the venerable system of Anglo-Saxon common law which has grown out of the experience of the ages, and which is by many, and those probably the wisest, regarded as the greatest achievement and most important possession of the human race. Probably existing laws are adequate to the situation, at least so far as the unions have not effected the repeal of the common law which has protected the liberties of English-speaking people since English was first spoken. Altho the common law has always been regarded mainly as the defence of the poor against the rich, many people have been surprised to find in it equal elements of defence of the rich against the poor. An impression has become widespread that *vox populi* is not always *vox dei*, and that the voice of the trade-unionist is not always even the voice of the people.*

* An instance instructive in many ways, not least regarding the frequent boomerang effect of legislation, is afforded in this connection. No portion of the community was more active than the trades-unions in the agitation which led to the Sher-

However, conspiracies of laborers to obstruct and even to destroy the business of employers who would not, and often could not, concede to their demands, have grown so frequent that, like the violence of primitive communities, they have come to be regarded as justifiable; and American legislatures have even passed statutes admitting a right to strike. But the courts are taking different ground.

265 (a). The Law of Conspiracy. The legality of a number of men doing together what each may do separately, was treated by Justice Harlan, in the U. S. Supreme Court, Arthur vs. Oakes. He said:

"An intent upon the part of a single person to injure the rights of others or of the public is not in itself a wrong of which the law will take cognizance, unless some injurious act be done in execution of the unlawful intent. But a combination of two or more persons with such an intent and under circumstances that give them, when so combined, a power to do an injury they would not possess as individuals acting singly, has always been recognized as in itself wrongful and illegal."

Nearer up to date, in 1906, the Pennsylvania court of first resort (whose judgment was confirmed by the higher court) in the Purvis Boycott case, said:

"The defendants contend, however, that what they did in concert was simply what each might have done for himself, acting on his own initiative, and that their concerted action was not, therefore, unlawful.

"I do not understand such to be the law of our state. There

man Anti-Trust Act. This act makes criminal every combination in restraint of trade between the states. It was primarily aimed against abuses among the railroad companies and the great shippers. It has now been applied by the courts to boycotts and similar combinations interfering with the business of any establishment sending goods outside of its own state, and the mere notification of their criminality peacefully resolved the teamsters' boycott against the Kellogg Switchboard Co. in Chicago, the freight-handlers' boycott against the meat-packers, and other boycotts in other places. The unions, dissatisfied with the laws they advocated for others, when applied to themselves, are now agitating for repeal.

is, under some circumstances, a potency in numbers of which the law takes notice. 'Men often do [illegally] by the combination of many, what severally no one could accomplish, and even what when done by one would be innocent. There is a potency in numbers when combined which the law cannot overlook when injury is the consequence. . . .'" Morris Run Coal Company vs. Barclay, 68 Pa. 173.

Then was quoted a previous decision, in Patterson vs. Building Trades Council, 11 Dist. Rep. 500:

"'All the authorities of this state go to show that while the act of an individual may not be unlawful, yet the same act when committed by a combination of two or more, may be unlawful, and therefore actionable.'"

The court went on:

"The authorities above cited indicate clearly that the doctrine of Bohn Manufacturing Co. vs. Hollis, 54 Minn. 223 and 40 A. S. R. 319, that 'What one man may lawfully do singly, two or more may lawfully agree to do jointly', is not the doctrine of the law of our own state. Neither, indeed, does it seem to conform to elementary principles. The efforts of one, by reason of their very puniness, may be such that the law will take no notice of them: 'de minimis lex non curat.' But when, with increasing numbers, the individual effort has grown into an avalanche of power, can it still be said that the law will not notice it because the individual contributions thereto are small? With us the law takes notice of the cumulative power of increasing numbers."

The same point was sustained by Judge Knowlton of Massachusetts when he said:

"An act which can be done in legitimate competition by one, two or three persons, each proceeding independently, might take an entirely different character both in its nature and its purpose if done by hundreds in combination."

Similar ground was taken regarding the whole apparently innocent class of rights which include stopping work at will; choosing one's shopmates; buying where one pleases; peaceably arguing with another man regarding choice of places and times for working, buying and selling; etc., etc., when the United States Supreme Court said:

"No conduct has such an absolute privilege as to justify all possible schemes of which it may be a part. The most innocent and constitutionally protected of acts or omissions may be made a step in a criminal plot, and if it is a step in a plot, neither its innocence nor the Constitution is sufficient to prevent the punishment of the plot by law."

The general principle was thus illustrated by Hon. Daniel Davenport, Counsel to the Anti-Boycott League, in an address before the Citizens' Industrial Association of America, in 1905:

"Suppose half a dozen men in my town are bakers; I go to one of them. . . . He may say to me: 'You do not belong to my church, or you do not belong to any church. . . . I do not want to sell you any bread unless you join the church.' He has a perfect right to do that. And so, if I go to each of the other five, every one of them has a right to say that he will refuse to sell to me; but if those six men have combined together and *agreed* not to sell me bread, in order to make me do something, for instance, to make me join the church, *that* is a conspiracy, and every act they do to carry out that conspiracy is unlawful, by reason of the fact of its being a step in the plot.

"That principle has been laid down by the Supreme Court of the United States in a case that arose in the State of Wisconsin. It has been emphatically laid down by the courts of Illinois, and it has, within a few days, in cases that we have been connected with in the State of Massachusetts, been recognized and applied."

Other decisions to the same general effect are too numerous and too various to recount. Occasionally some demagogic judge who cares more for Labor than for Law, or some petty magistrate who does not know the law, turns up with a decision in the opposite direction, but the weight of the law is now past question. The bearing of these decisions on the right to strike is obvious—that men have no right to attack another man's property or business because they once helped in it, and threw up their jobs because they and their employer could not agree; and that conspiracies to strike, picket and boycott are such attacks.

265 (b). The "Corner" again. A strike is questionable also on the second ground that it is an artificial damming up of the supply of labor: so it is open to the same objection with an artificial cornering of goods.

For these considerations, the common law—the decisions of judges have not seldom been against there being any such thing as a right to strike. The English courts, whose example has largely influenced ours, have held from time immemorial that it was criminal conspiracy for workmen to unite to raise wages and shorten hours, and Parliament has passed statutes to the same effect. These acts were repealed in 1824, and later there have been statutes declaring that no combined action could be criminal in a trade dispute unless it were criminal when committed by an individual. But there is a growing sense that this is going too far. As already shown, there are many decisions of courts, English as well as American, that acts which can work no injustice when performed by an individual, may work great injustice when performed by many men at once.

265 (c). Malicious intent. A long-established principle is that strikes are criminal if undertaken with malicious intent. The range of malicious intent, however, is not yet very thoroughly defined. It seems to have been sufficiently determined whether there is an element of malicious intent in holding up the transit of food or fuel of the whole community in order to secure some relatively minor convenience or concession for a few.

265 (d). Labor-saving machinery. In Massachusetts, strikes are illegal when directed against labor-saving machinery. In 1895 the Supreme Court issued an injunction against the masons building the Harvard Medical School, stopping work because the contractors were using labor-saving machinery to form the arches. Labor-saving machinery is so clearly demanded by the greatest good of the greatest number, or "public policy", that it is strange that this act of the judges should be regarded as something of a novelty.

265 (e). The open shop. Strikes are illegal when directed against the open shop. In the Chicago Typothetæ Case, in 1905, the injunction prohibited "from attempting to prevent by threats of injury or by threats of

calling strikes, any persons from accepting work from or doing work for such complainants." And there are hosts of decisions to the same effect.

265 (f). "*Immediate interest and the sympathetic strike.*" Many of the judges who admit the right to strike, limit it by an important provision—that legally to conspire to strike, a man must have an "immediate interest" in the object struck for. It is widely held that a man has enough immediate interest in increased wages or decreased hours to justify his conspiring to strike for them, but it is also widely held that in a strike to compel the discharge of a non-union man, or the reinstatement of a union man, the strikers have no such "immediate interest" as to prevent the strike being an illegal conspiracy. For the same reasons, sympathetic strikes are now quite generally held to be illegal conspiracies, a man having no such "interest" in another establishment or another trade working beside him—on a building for instance, not to speak of a trade in another part of the country, as to justify his striking because the others have struck.

265 (g). *Prof. Adams' summary.* The following additional causes enumerated by Professor Adams render strikers liable to criminal indictment:

"Hindrance and delay of the United States mail, persuasion of others to obstruct the mails or interstate commerce generally, inducement or coercion of one person to boycott another, the coercion of the public generally to adopt certain measures, and probably the violation of labor contracts. It need hardly be said that in most of these cases the combiners hope to benefit themselves ultimately. But if, in the chain of intermediate means, there is an illegal act such as intimidation of a 'scab', or if the ultimate benefit is remote, trivial or indefinite, while the injury is the immediate object sought, the combination becomes illegal."

265 (h). *Conflict-ing laws.* A recent injunction against a strike on the Wabash road was dissolved because it did not appear that the intending strikers contemplated an "illegal act". If tying up a railroad is not yet an illegal act, the tendency of the law shows that

people are becoming awake to their rights at a rate that will soon make it one.

Yet despite these decisions of the courts, Pennsylvania has a statute justifying any strike whatever that union rules may sanction. Consequently nothing that a trade-union sanctions can be an "illegal act"! But the Supreme Court of the state takes a different view. On March 19, 1906, in the Purvis case before referred to, it said:

"In attempting to justify their conduct the appellants allege authority for it in the act of June 16, 1891, P. L. 300. While that act provides that they may devise and adopt ways and means to make rules, regulations, by-laws, and resolutions of their order effective, it sanctions no rules, regulations, by-laws or resolutions to commit wrong, and if it attempted to do so by authorizing the appellants to interfere with the absolute rights of the appellees, the legislation would be a dead letter, for the legislature cannot abolish the Declaration of Rights."

And on the other hand, Illinois has a statute as follows:

"Sec. 158. If any two or more persons shall combine for the purpose of depriving the owner or possessor of property of its lawful use and management or of preventing by threats, suggestions of danger or any unlawful means, any person from being employed by or obtaining employment from any such owner or possessor of property, on such terms as the parties concerned may agree upon, such person so offending shall be fined not exceeding \$500, or confined in the county jail not exceeding six months.

"Sec. 159. If any person shall, by threat, intimidation or unlawful interference, seek to prevent any other person from working or obtaining work at any lawful business on any terms he may see fit, such person so offending shall be fined not exceeding \$200."

But either way, as already intimated, legislative acts are apt to become dead letters, because they are much influenced by ignorant clamor; the body of the common law which has grown up from the decisions of trained judges, has a tendency to put the right of striking with the right of revolution—counter to law, justifiable only in the absence of other remedies for

unbearable ill—a right to be handled, not recklessly, as is the present fashion, but only in the gravest need, and to be tested only by results.

265 (1). Duty of district attorneys. Under this view, whether, in any special case, a strike should be justified as a revolution, should depend on public opinion, as represented by a jury. There need be no fear that any jury will favor capital as against labor, and there can be little doubt that in the absence of conflicting statutes, whenever it shall appear that any public utility is paralyzed by a conspiracy, it is a district attorney's duty, however much it has been neglected, to investigate the conspiracy, and if he feels warranted, to propose the indictment of the conspirators. While, as already said, public opinion could be depended upon for all reasonable leniency, no one who has seen, for instance, many thousands of the population of New York City deprived of their usual means of reaching business and returning home, by the conspiracy of a much smaller number of railroad employees, can have much doubt of what public opinion in such a case will eventually be. The rights of the public are not going to be left forever under the dictation of labor leaders, or even of trade-union conferences, and there cannot be many years before public opinion will demand statutes perhaps like those of Australasia (278 *a. ff.*), to protect public rights against them.

So much for the general attitude of the law regarding strikes.

266. The work-man's freedom. As to the specific end of coercing men into unions, the attempt to make all men in a trade join the union was declared in 1905 by Chief Justice Knowlton of Massachusetts to be against public policy, because it was an attempt to create a monopoly of labor in that branch. Many other judges have held the same.

In the same decision, Judge Knowlton allowed damages against a trade-union officer for forcing an employer to discharge a non-union man.

In New York a statute prohibiting an employer from

making non-membership of a union a condition of employment, has been declared unconstitutional. But on the other hand, Professor Seager * says:

"The Court of Appeals of New York State, in branding as a conspiracy the effort of a union to secure the discharge of a non-union man, used the following language: 'Public policy and the interests of society favor the utmost freedom in the citizen to pursue his lawful trade or calling, and if the purpose of an organization or combination of workingmen be to hamper or restrict that freedom, and through contracts or arrangements with employers to coerce other workingmen to become members of the organization and to come under its rules and conditions, under the penalty of loss of their position and of deprivation of employment, then that purpose seems clearly unlawful and militates against the spirit of our Government and the nature of its institutions.' † But a few years later ‡ the same court, looking at the same question more from the point of view of labor unions, decided that a strike for a similar purpose was lawful, on the ground that the object sought was not the injury of the non-union employee, but the preservation of the union. So long as there seemed to be no malice in the action, and violence and intimidation were not resorted to, it was held that the incidental injury to the non-unionist could not render it a conspiracy."

"This reversal of opinion illustrates fairly well the difficulties which American courts encounter in their efforts to apply the common law of conspiracy to labor cases, and 267. *The law chaotic.* explains why they arrive at such diverse conclusions as are shown by the authoritative decisions of the courts of the different states. It would be a great gain if the whole question of the nature of conspiracy in connection with trade disputes could be settled by statute in the United States as it was in Great Britain by the Act of 1875."

Uniformity could not be hoped for in state legislation. But perhaps a model for state legislation could

* This chapter is largely indebted to the chapter on the Legal Regulation of Labor in Professor Seager's "Introduction to Economics" and to Professor T. S. Adams's chapter on Labor Laws in "Labor Problems". With those two admirable and up-to-date works in hand, it would be worse than superfluous for the author of a brief summary like this, to explore the entire ground again. For a fuller treatment, the reader is strongly advised to consult those works.

† In Curran vs. Gallen, 152 N. Y. 33 (1897).

‡ In National Protective Association vs. Cummings, 170 N. Y. 315 (1902).

be hoped for in a United States statute regarding a conspiracy to interrupt commerce between the states.

Truly, the law has as yet handled labor questions only in a very wobbly way. Professor Seager says elsewhere:

"There is scarcely a regulation, from a simple restriction on the age at which children may be employed to the provision that men may work only eight hours a day in specified industries, that has not been declared unconstitutional in certain sections of the country, only to be upheld as a legitimate exercise of the police power in others."

The vacillation and uncertainty of the law have been great in America, not only because of the fact that each of forty-odd states has its own set of laws, but by the decisions of an elective judiciary seeking the labor vote, and by statutes passed at Labor's demand. Yet the natural evolution of law is unquestionably toward the increased protection of the right to work by those who want to work.

Slow as the law has been, it has now reached a secure and consistent position against the picket and the boycott.

268. Picketing
unlawful.

As to picketing, the courts, with practical unanimity, are taking very decided ground that it is an unlawful invasion of private rights.

The early injunctions against picketing were quite generally on the ground that the common law is against enticing away a servant or an employee, unless possibly to secure an advance or prevent a decline of wages. This of course would not permit picketing in a sympathetic strike or a closed-shop one, or one resulting from a discharge of hands. But later, very strong general ground has been taken against picketing as tending to disturb the peace.

Judge McPherson, sitting in the United States Circuit bench for the Southern District of Iowa, on the 5th of July, 1905, said:*

* From an address of Hon. T. J. Mahoney before the Citizens' Industrial Association of America, Chicago, November, 1905.

"There is and can be no such thing as peaceful picketing any more than there can be chaste vulgarity, or peaceful mobbing, or lawful lynching.

"A portion of this language was adopted and amplified in an opinion of the Appellate Court of Illinois, handed down on the 3d of October, 1905, the court saying:

"The picket system once established, the intimidation, assaults, slugging and bloodshed followed as naturally and inevitably as night follows day. There can be no such thing as peaceful, 'polite and gentlemanly' picketing any more than there can be chaste, 'polite and gentlemanly' vulgarity, or peaceful mobbing or lawful lynching.

"It is idle to talk of picketing for lawful persuasive purposes. Men do not form picket lines for the purpose of conversation and lawful persuasion. . . . Its use is a form of unlawful coercion."

"After Judge McPherson had filed the opinion referred to, the managers of the strike abandoned the use of the word 'picketing' and adopted that of 'reporting', the pretense being that their acts could possibly be justified by changing the name, but the character of the work done by the 'reporters' was identical with that formerly performed by the 'pickets'. . . . The system being the same under a different name, deserved and received from the court the same condemnation that had previously been visited upon picketing."

One of the latest decisions comes from the United States District Court sitting at Milwaukee, and is thus reported in the *New York Times*:

"MILWAUKEE, June 17." [1906].—"In a sweeping injunction United States Judge J. V. Quarles forbade the iron-molders' unions and sixty-one individual members from in any way interfering with the business of the Allis-Chalmers Company.

"The strikers are enjoined from impeding, hindering, obstructing or interfering with any of the business of the company, and from entering the grounds or premises of the complainant against its wish. They are enjoined from compelling or attempting to compel or induce by use of threats or intimidation of any sort, or by fraud or deception or violence, any person to leave the employment of the plaintiff company, and also from attempting to persuade the employes of the company to break their contracts and leave the employ of the plaintiff.

"Judge Quarles further commands the striking molders to desist from congregating at or near the premises of the company with the purpose to intimidate or obstruct, surround or impede any of the employees of the plaintiff. The order further provides that the defendants are not even to go to the homes of

any of the employees for the purpose of persuading them into leaving the Allis-Chalmers Company."

Similarly, an injunction in the Connecticut Superior Court, June 27, 1906, restrains the union from "persuading or cajoling" the complainant's employees to leave work.

In the *Typothetæ* case in Chicago in 1905, the court enjoined picketing not only at the factory,

but "about or near any place where their employees are lodged or boarded, for the purpose of compelling, inducing or soliciting the employees of any of said complainants to leave their service; . . . from attempting by bribery, payment or promise of money, offers of transportation or other rewards, to induce the employees of any of said complainants to leave their service."

The early decisions against picketing have generally been not only against enticing the employee away, but also on the ground that it engenders violence. The later ones evidently consider the fact that it is an unjustifiable conspiracy against the right to carry on business.

As to the liability of unions and their members, for damages in strikes and boycotts: in the last quarter of the nineteenth century, while the English law took the direction of tolerance toward strikes, it took a counter-direction regarding the liability of trade-union funds for damages inflicted in consequence of union action. It had been held that as the unions were not corporate bodies they were beyond the reach of suits, and that their members could only be reached as individuals. The drift of opinion counter to this position became decisive in 1901, when the House of Lords held in the celebrated *Taff-Vale* case that the unions' funds were liable, and as there is no limited liability without incorporation (154 a), this decision would probably make each member liable for the total amount of any damages that might be granted against a union. The damages in this case were £23,000. The English unions are now

269. Unions' liability for damages.

trying hard to have the effect of the decision annulled by statute—one of the typical unionists' attacks on the law.

In the United States there are already several decisions in the same direction: for example, the funds of the Waterbury, Conn., unions were attached for damages resulting from violence in the street-railway strike of 1903, the houses of the Danbury boycotters are under attachment, and so are the bank accounts of the men in Rutland, Vt., who interfered with their employers getting help in 1903.

For stopping work, by master or man, to the unreasonable detriment of others, it is very probable that the law will soon clearly see the reasonableness of damages: inasmuch as *for leading others to stop work, damages have already been granted.*

There is an important consideration which I cannot express better than I have already done in an earlier work,* which I will therefore venture to quote again:

Damages under such circumstances could generally be collected from only one side—if the capitalist is in the wrong, the laborer has an easy remedy; if the laborer is in the wrong, the capitalist has virtually none. This is one reason why employers do not always contract with their employees for a reasonable notice from either side before severing their relations. And at best, the law is a slow and imperfect remedy, tho the best we have. Not the least of the advantages that would come to society from an increased proportion of property-holders, would be increased faithfulness to contracts, from fear of damages. This being absent,

269 (a). Misdemeanor as a substitute. however, in order to put the two sides on an equality in contracting, the violation of a labor-contract might be made a misdemeanor subject to imprisonment. Such a law would guard the poor man against the rich man more effectively than a money penalty, which the rich man could afford to disregard; and it would guard the rich man against

* *Op. cit.*

the poor man, by the only penalty which could be enforced. Such a law would have the merit that under it, juries could be depended upon to treat the poor man at least as justly as the rich. This point deserves the careful consideration of all who feel an interest in the improvement of the law.

270. *Some summaries of the law.* The Alabama statute prescribes as unlawful the following acts:

"A conspiracy between two or more persons to prevent any person, firm or corporation from carrying on any lawful business within the state, or for the purpose of interfering with the same.

"The loitering of one or more persons about a place of business for the purpose of inducing others not to buy from, sell to or have business dealings with a person, firm or corporation, or to picket any works or place of business for the purpose of interfering with its business.

"The printing or circulation of 'any notice of boycott, boycott cards, stickers, dodgers or unfair lists, publishing or declaring that a boycott or ban exists, or has existed, or is contemplated', or publishing the name of any public official or judicial officer upon any blacklist, unfair list or other similar list because of any lawful act or decision of such official.

"The use of force, threats or other means of intimidation to prevent any person from engaging in any lawful occupation.

"For any person, firm or corporation to maintain a blacklist or to notify any other firm or corporation of the names thereon to prevent the person so named from receiving employment"

Vice-Chancellor Pitney of New Jersey summed up the law in 1903:

"First—That all sorts of laborers may lawfully combine and form unions for their mutual benefit, and that they may use all lawful means to promote their own interests, being careful in so doing not to infringe on the rights of others.

"Second—One lawful means to that end is the refusal to work on terms offered by the employer.

"Third—An unlawful means is to hinder or prevent others from working for an employer under such terms as they shall see fit.

"Fourth—One means of such hindering and preventing is in various ways to render it either difficult or uncomfortable for such willing workmen so to work. This is an unlawful means.

"Fifth—Another unlawful means in common use to hinder or prevent willing employees from working, and to compel

employers to accede to terms which they would not otherwise adopt, is the boycott in its various forms."

271 Injunctions. Injunctions have been issued against almost every form of boycott palpable enough to recognize, and damages have been awarded in several cases.

The Anti-Boycott law in Wisconsin was enforced in so comparatively inoffensive a matter as two newspapers refusing to print advertisements from the patrons of a third which had raised its rates higher than theirs, unless at the same rates. As bearing on such innocent acts as stopping buying and stopping working, which are at the root of strikes and boycotts, Mr. Mahoney said in the address already quoted from, that the courts

' no longer hesitate to grant injunctions which shall not only prevent the perpetration of assaults and the destruction of property, but shall equally protect the peace of mind of willing employees, and give security from injuries and interference with the rights of employers to carry on their business. . . . The courts are equally in accord in exercising the necessary right to punish for contempt those who insist upon violating the injunctive orders. There was a time in the not very remote past when much outcry was raised against trials for contempt being conducted by the court instead of by a jury, but . . . the spectacle was all too frequent, of a jury acquitting men whose guilt was more than abundantly established.'

But this does not warrant agitation for doing away with injunctions, but only for doing away with the judge's power to punish under them without a jury. A bill for the purpose is now before Congress. That, however, is not what "Labor" wants: it wants its own sweet will free from the interference of either judge or jury.

Yet even where the injunctions have not held, they have been of value in giving both sides time to stop and think. But the unions have got so much in the habit of forcing their own way, regardless of all law, that, altho they are constantly seeking injunctions against their employers, they are very bitter toward

injunctions when issued against themselves, and have sought to have statutes against granting any injunctions at all in labor disputes. This has a show of fairness because it would appear to apply equally to both sides. But the show is specious (altho it seems to have deceived the President of the United States while the proofs of this book were being read): because the employers are in a small minority and hardly ever resort to violence. Granting the short-sighted view of the unions that any lasting good can come from violence, they can well afford to endure the little violence the other side is apt to attempt, if they can have free swing for their own habitual lawlessness. On this subject of injunctions I again resort to some earlier expressions.*

There is one form of anarchism so specious that it has deceived many good men. It proposes to do away with government, by doing away with a little at a time; and its present object of attack is what it is pleased to call 'government by injunction'. Now injunction takes the place, in government, of the ounce of preventive. It is better to prevent lawlessness than to punish it. Injunction is merely the exercise by a judge, of the authority to prohibit an act, not necessarily itself punishable at law, which he believes likely to lead to acts which *are* punishable at law, and no sane man can doubt that the proper exercise of this authority effects a great saving of public peace and safety. The injunction has been abused, as has every feature of the law: judges are but human, but no sane man claims that that fact should do away with the law. Those who object to injunctions are (many of them without knowing it) in precisely the same condition as if they objected to the punishment of the actions which injunctions are issued to guard against, while a large majority of those who object to injunctions, object simply because injunctions prevent their having their own way; and they object on the same grounds on which they object to the police and militia as well as to the courts—it is

* *Op. cit.*

simply the objection to all authority—it is the spirit of anarchy.

The assumption by Labor that of right it owns everything, can alone account for some of its claims. The most extreme of them, perhaps, is illustrated in the bill advocated by Mr. Gompers, the president of the American Federation of Labor, which would prevent United States courts from issuing injunctions in any contention between employers and their men, unless to guard some property or right against damage that could not be made good, and then (here is the extreme claim) the bill goes on to provide that "for the purposes of this act, no right to carry on business of any particular kind at any particular place, or at all, shall be considered or treated as property, or as constituting a property right."

This of course is an almost laughably disguised scheme to obtain from legislation a right to destroy such property at will, through the picket and boycott, which the courts have abundantly declared counter to American liberty. The two million labor-unionists are simply claiming absolute control over the rest of the American people.

At the meeting of the National Civic Federation in December, 1906, the counsel for the American Federation of Labor argued that the laborer's right in his labor is just the same thing as an employer's "right to carry on business of any particular kind at any particular place, or at all". He challenged discussion of the point, and said that he had always found discussion of it evaded. The claim seems to me very much like a claim that because a man's body is made up of cells, a cell is the same thing as a man. In this connection, however, the fallacy lies in the fact that no laborer ever yet sought the protection of a court for his property in his Right to Work, unless it was for protection from the very men against whom the employer too seeks protection for his Right to Work—his right to carry on his business. Therefore the very identity in the two properties, be it real or fanciful,

which the Federation of Labor claims, is an argument in favor of the very court protection of both which the Federation seeks to paralyze in the case of the employer's right—a very pretty example, it seems to me, of the reasoning on which all labor coercion is based. There is probably no more remarkable instance of the madness which can be produced by a brief period of successful aggression before the aggrieved have time to organize for defence. The counter-organization has begun, however, and the madness seems to have reached the pitch where it indicates the intention of the gods to destroy. But if this could mean the permanent destruction of labor organizations, it would be deplorable. Yet the present organizations will be destroyed if they cannot be reformed. There will be better ones in either event, and it is not yet proved that they must be new ones.

**272. Regulation
of wages, hours
and conditions.**

Leaving now the law's regulation of labor's attempts at coercion, let us devote a word to its general attitude regarding the regulation of wages, hours and conditions.

Professor Adams, who certainly will not be accused of unfavorably representing Labor's side, says: *

272 (a). The labor trust again. "In the United States . . . the history of labor legislation is one long tortuous record of special protection to the working classes, secured by subtle limitation and frank disregard of the doctrines of free contract, and by class legislation. . . . Labor organizations are specifically exempted in a number of states from the operation of the anti-trust acts (altho such exemption has been held to annul the whole law); and in their practical execution the anti-trust laws have been directed against combinations of employers in restraint of trade rather than against the combination of employees which are equally in restraint of trade."

Of Labor laws in the United States, Professor Seager† says:

"There are both state and national laws that directly further the monopolistic ambitions of trade-unions. The state of Penn-

* *Op. cit.*

† *Op. cit.*

sylvania has a law requiring men who wish to become master miners to work as helpers for a certain period and to pass then a state examination. New York state has similar laws in reference to plumbers and horseshoers. The [alleged] purpose of such statutes is of course to insure a certain degree of proficiency on the part of workmen who perform these important services, but that they assist trade-unions in their efforts to control the supply of labor in their trades is beyond question. A Federal law which operates in the same direction is that prohibiting the entrance into the country of workmen under contract of employment. It might appear on general principles that the immigrant whose reputation at home was such that he could secure a contract of employment from an employer in this country, would be a better citizen than the immigrant who was attracted only by the vague hope of bettering his condition, but this view disregards the special interest of those with whom the newcomer would compete for employment. . . . He enters the country as a non-unionist, or 'scab'. . . . The law which prevents such resort to the foreign labor market to break a strike . . . serves to confirm a close union's monopoly of the labor supply, at the expense of the whole community."

Of course such utterly irrational laws cannot stand, and never would have been passed if the community in general were as well organized (as it is rapidly becoming) against favoritism in legislation, as the unions are organized for securing it; or even if capital were not so engrossed in securing special privileges from legislation, that it seldom spares attention to general legislation affecting its general rights, but is content to rest upon its power to take care of them when exigencies arise.

Professor Seager farther says:

272 (b). *Protecting the laborer against himself.* "The Supreme Court of Colorado declared unconstitutional an eight-hour law applying to men employed in the mining and smelting industries on the ground that if such a law was calculated to protect the health or morals of anybody, it could only be of the very man whose work was restricted, and that the legislature had no right to restrict freedom of contract for the benefit only of the persons whose liberty was thus limited; and yet the Supreme Court of the United States had declared in upholding the constitutionality of an identical statute previously passed by the state of Utah, that the legislature had the right to protect an individual even 'against himself', on the ground that 'the state still retains an interest in his welfare'

no matter how reckless he may be', and that when 'the individual health, safety and welfare are sacrificed or neglected the state must suffer'."

Following out the idea of "protecting the laborer against himself", Professor Seager turns to another decision of the United States Supreme Court, which

"affirms the propriety of labor laws on the general ground that employers and employees are unequal in bargaining power. 'The former naturally desire to obtain as much labor as possible from their employees, while the latter are often induced by fear of discharge to conform to regulations which their judgment, fairly exercised, would pronounce to be detrimental to their health and strength. In other words, the proprietors lay down the rules, and the laborers are practically constrained to obey them. In such cases self-interest is often an unsafe guide, and the legislature may properly interpose its authority.' Finally, it affirms the principle already quoted, that in the exercise of its police power the legislature has the right to protect a man even against himself."

This principle may be regarded as established law. New York goes so far as to "protect a man against himself" by punishing attempts at suicide—which, paradoxically, puts a premium on the success of the very act it prohibits. There is a point at which this doctrine would involve the most enervating paternalism—a point at which the individual must take the consequences of his own acts. On this point Professor Seager says:

"In Great Britain and the United States the notion that the legislative power should not be used to regulate hours and conditions of employment has been abandoned by most thoughtful persons, but the prejudice against any interference with wages, like that practiced in New Zealand and other Australian states, remains nearly as strong as ever. There is, of course, good ground for this distinction. Hours and other conditions
272 (c). *Wages* of employment affect directly the health and *unlike conditions*. vigor of the working classes, wages only indirectly. Moreover, workmen are less mindful of their own interests in connection with hours and sanitary arrangements than in connection with wages. Making all allowance for these considerations, many thoughtful persons still believe that, under certain circumstances, notably those found in connection with the sweating system, the regulation of wages must also

be undertaken by the government if serious evils are to be corrected. It is sometimes argued that the law cannot fix the rate of wages, but this is contrary both to reason and experience. The law cannot fix both wages and the number of persons who shall be employed at those wages, but it can declare that no one shall be employed in given trades unless paid certain minimum wages, and enforce its decree."

272 (d). The living wage. And here follows an admirable utterance regarding "the minimum wage", which should not be confused with that favorite topic of the sentimentalists "the living wage". A great deal has been written to the effect that it is an employer's duty to give an employee enough to live upon decently, whether the employee earns it or not. But this sickening absurdity should not prevent the reasoning student from giving attention to the following considerations.

"The result may be an addition to the number of dependents who are 'unemployable' at the wages fixed because too inefficient to earn them, but it may be better and cheaper for society to support such persons in almshouses than to permit their competition to hold the wages of great sections of the population down to a starvation level. In order to mark off the dependent from other classes the state may find it necessary itself to fix a standard by which the ability of the individual for independent self-support may be determined. Without desiring to advocate the establishment by law of standard or minimum rates of wages for the sweating trades, the author wishes to insist that this policy merits the same unprejudiced consideration as is now accorded by intelligent people to proposals for restricting the employment of children or women, or for requiring the use of safety appliances in connection with dangerous trades."

272 (e). Too much care enervating and against liberty. It is hard to tell just how far the law should take care of a person, and how far he should be left to take care of himself. Certainly in countries where the government is very paternal, the mass of the people are apt to be very childish. And yet it is generally agreed that the law should prevent cruelty to children and even to animals—that it should limit the hours and sanitary conditions under which children and women, and sometimes even

men work; and as already illustrated, many claim that it should even protect a man against himself if he seeks to do excessive and dangerous things. But this can be carried to the extent of infringing upon liberty. This danger in protecting him from other dangers, sometimes leads to strange results. For instance: accidents from ill-guarded machinery and from laborers working when too exhausted to be cautious, annually destroy more than twice as many lives in the state of New York alone, as were destroyed on our side in the Spanish war, not to speak of the larger number maimed and crippled. These accidents are more frequent in the last weary hour of work than during the rest of the day. Yet there are laws requiring machinery to be protected, and against the working of men—especially on railroads—longer than their attention can endure. But when suits for damages have been brought under these laws, the courts have sometimes declared them unconstitutional, as depriving a man of the liberty to work when and where he pleases, while the facts were that his "liberty" was only Hobson's choice—working as ordered, or throwing up his job. It seems as if such statutes ought to be penal as against the employer: then the "liberty" of the laborer would not be reduced to the miserable alternative of running the risk which the employer should obviate, or temporarily abandoning the means of supporting himself and his family.

It may be remarked in passing, that, on the other hand, employers are frequently subjected to injustice in connection with accidents. Juries often mulct them for injuries to employees which are the fault not of the employers, but of other employees.

Just as this goes to press, word comes of an interesting and suggestive decision to the effect that in a "closed shop" the laborer loses his right of action against his employer for damages resulting from the fault of a fellow workman, because the employer has not been untrammeled in his choice of workmen, and of course as the workman in the closed shop is inevitably a mem-

ber of the union which has circumscribed the employer's choice, he shares the responsibility for the shop being closed, and cannot "come into court with clean hands", a requisite which equity demands.

Statutes protecting the community from diseases bred in tenements and sweat-shops have often been set aside on grounds similar to those stated above—that it is part of a man's "liberty" to work where he pleases. It is a very difficult question how far the state has a right to interfere with the liberty of the individual—his liberty as a child to stay away from school, as child or man to break down his health by overwork, to expose himself to dangerous chemicals and machinery, to buy (or sell) dangerous medicines and intoxicants, and to get drunk and beat his wife.

272 (f). Extremes and the medium. This question has arrayed some of the best minds against each other. At the extremes of opposition are the anarchist, against the state's having any rights at all; and the ultramontane who would have the state, as merged with the church, regulate the minutest functions of the individual conscience. Probably the safe and reasonable limit lies at the state's right of self-defence. The whole community suffers from anybody's ignorance, ill health, mutilation, drunkenness, brutality; and has a right to guard against any such conditions becoming sufficiently widespread—directly, or by way of influence on popular conscience and sensibilities, as to cost the state more than it would cost to keep the evil within bounds. What shall be done against any *particular self-inflicted* evil, is of course for legislators to determine, but their first inquiry should be, not how great an evil it may be to any particular man: for that is his own business; but how great an evil is it apt to be to men in general: and that alone is their business.

CHAPTER XXII.

PERSONAL PROPERTY (CONTINUED).

Schemes for Distributing it more Evenly (Continued).

(V) Remedies on Trial.

273. Industrial
war and Industrial
law.

There can be no reasonable doubt that all the decisions alluded to in the preceding chapter, and many more, are steps in a process by which industrial war is to be replaced by industrial law, just as, in civilized nations, private war has been replaced by private law, and international war is being replaced by international law. In addition, however, to the evolutionary steps so far indicated, some revolutionary experiments are under way.

274. Legal experi-
ments in
Australasia.

Three legal remedies for conflicts over distribution, from which much is hoped, are now actually on trial in Australasia, and only in Australasia. They are (I) state competition with monopolies, (II) the fixing of a Minimum Wage, and (III) Compulsory Arbitration.

Australasia being so remote, specially illustrates the universal unreliability of testimony on controverted subjects. Sentimentality and the equally unreasoning antagonism which it tends to arouse in the practically disposed, seem to make it almost impossible for observers of social experiments even to see correctly, not to speak of reporting correctly. The latest writer on Australasia, Dr. Victor S. Clark,* is conspicu-

* "The Labor Movement in Australasia."

ous by the degree to which he has risen superior to these influences. He finds both good and evil in the minimum-wage commissions and arbitration courts, but does not find that either or both of them have introduced the millennium.

The interest as well as the importance of the subject justifies a special chapter, whose material I have, with the author's kind sanction, largely drawn from Dr. Clark's work.

These experiments being as yet (1907) restricted to Australasia, have worked only in an exceptionally homogeneous community, in which British stock with its broad-minded love of fair play largely predominates. Among the original convicts, many were high-minded persons transported for purely political offences; and much of the later colonization has consisted of large religious organizations possessing capital, character and culture. The amount of convict stock to-day is not worth considering.

Dr. Clark says:

"The consciousness of national kinship . . . is greater than in America, and for this reason communal sympathies are more active. . . . Production is confined largely to raw materials which are exported, and consumption is supplied by manufactured goods made in other countries."

[The inference that wages raised by legislation will not greatly affect prices of articles bought by the voters, seems contradicted later.]

"The government, in supplying transport service for the inflow and outflow of these commodities, has become the largest employer in the colonies. . . . The custom of appealing to the government to decide industrial disputes to which it is a party, makes it easier to recur to the same authority to fix labor conditions in private employment. . . . Forty-seven per cent. of the people reside in cities of not less than four thousand inhabitants, as compared with thirty-seven per cent. in the United States. The average concentration of working population is therefore greater in those countries, and the labor element has better opportunities for organization. . . . The

difference in the wage of skilled and unskilled workers is much greater in our own country, where the common laborer is usually either a negro or a foreigner. This variation of wages in the United States, parallel with national and race lines, lessens solidarity of sentiment and class consciousness among workmen."

Mr. Sidney Webb has said:

"Australian politics and Australian governments are very far from perfect, but their faults and their virtues are utterly unlike the faults and virtues of America."

For all these reasons, how the Australasian experiments would work among the mixed population of the United States, or especially among the almost entirely foreign population of some regions—and those generally the most troublesome regions—and how, moreover, they would work under our almost exclusively private control of industries, Australasian experience gives little indication.

^{275. State competition with monopolies.} The first of these remedies on trial—state competition with monopolies, may

be dismissed with a few words. Dr. Clark devotes to it but a sentence, tho one enthusiast who has discovered in it a panacea, devotes an article in a recent periodical.* The simple facts are that before there were any monopolies thought of, various Australasian communities, for the sake of aiding immigration and land development, started most of the various industries which will be described later. The

^{275 (a). In lending capital.} government's credit being better than that of individuals, and it wishing to aid

in opening up the new lands, it borrowed money to lend to farmers. This of course brought the rate of interest down, and may be considered to have been competition with monopoly of capital, if such a thing could exist. Of course the indirect effect of other government enterprises has been similar, and

* *Everybody's*, September, 1906.

275 (b). In some industries. it may be possible that the Australasians have saved more in keeping prices down, than they have spent in taxes to pay deficits on government industries. It is even supposable that in any community where there is enough political virtue to conduct government enterprises honestly, it may be worth while to pay the deficits apt to result from their inevitable inefficiency as compared with private enterprises, for the sake of guarding against monopolies. It is even supposable that Australasia, with her homogeneous British stock, her comparative freedom from the demoralizing glitter of superfluous wealth, and her other exceptional conditions, may possess the degree of political virtue needed to curb monopoly by government competition. But nothing has yet been done for the mere sake of that result; and should its slight indirect accomplishment so far, encourage to successful direct efforts, their success could prove nothing for a community like ours, overwhelmed with debased immigration, and corrupted by the spectacular temptations of misplaced superfluous wealth.

276. The Minimum Wage. As to the minimum wage, already mentioned (in 272 d, which the student is advised to re-read in this connection), in Australasia, the idea has been worked out, according to Dr. Clark, as follows:

"The problems presented by sweating and Chinese competition were so complex and required so much detailed regulation that the direct intervention of Parliament was likely to prove cumbersome and ineffective. Therefore authority to deal with these questions was delegated to subordinate bodies, called minimum-wage boards . . . and composed of men having practical knowledge of the industry under their jurisdiction. . . . Their functions do not exceed in principle those exercised by railway commissions in America—with the important reservation that they affect private as well as public and quasi-public industries. The Victorian Parliament . . . gave the boards authority to prescribe a minimum wage for employees in certain classes of establishments. This authority was granted in order to remedy a special evil—a wage so low *276 (a). Against sweating.* that it threatened the common interest of society in maintaining a standard of living

among all classes sufficient for healthy social progress. . . . The average profits of manufacturers are no higher when sweating is rampant, than when a fair wage is paid. . . . The better 276 (b). *Sought by employers rather courted some provision that good employers.* freed them from the competition of less scrupulous men of their own class. Moreover, tho the determinations of wage boards are legislative acts, in essence amendments to the factory law, they preserve in some degree the form of a voluntary agreement. The boards who pass them are com- 276 (c). *How* posed of an equal number of delegates from the *regulated* employers and employees in the trade in question, under a non-partisan chairman, and their decisions are frequently compromises, formally not unlike collective bargains made between trade-unions and employers. . . . They are required to ascertain as a question of fact the average wage paid by reputable employers, and are forbidden to fix a minimum higher than the average wage as thus determined. The boards are also allowed to fix special rates of pay for aged, infirm or slow workers. . . . Employers have applied for eleven of the thirty-eight boards established."

The Arbitration Courts, to be described later, seem to be rapidly taking over the functions of the Minimum Wage Boards, with results not quite contemplated by the originators of either.

276 (d). *Not always effective.* "When the court prescribes a minimum equal to or above the average wage previously paid, the employer may meet this change by two different policies. In order to keep his payroll down, he often lowers the pay of his more competent hands, to compensate himself for the higher rate he is obliged by law to give his poorer workers." [Or, second, New Zealand] "statistics indicate that in probably a third of the occupations regulated by the court, the maximum wage does not exceed the minimum fixed by the award. The greatest variation usually occurs in industries requiring the highest degree of skill. In such industries the employer, in order to maintain a gradation of wages among his workmen, usually discharges his less efficient employees.

"Slow workers, who are not a negligible element in the industrial army, then become a social problem. They form from ten to twenty per cent. of all workmen, and their distress is an evil greater than ordinary unemployment. Some manufacturers in Victoria dismissed sixty or seventy hands as soon as the minimum wage went into effect in their business. The labor party proposes to remedy this evil by old-age pensions. To absorb her surplus labor, New Zealand has undertaken great public works, paid for from loans. Western Australia has until

recently possessed a growing field of employment in the newly discovered gold districts. New South Wales and Victoria have not enjoyed these exceptional conditions, and in the latter state especially, the problem of the slow worker has been serious."

276 (e). Recrudescence of the sweat-shop.

Even something like the sweat-shop is beginning to appear—not the healthful hand industry of earlier times:

"Slow workers thrown out of employment by the minimum wage sometimes open shops in basements and attics, where they make goods which they peddle directly to retail dealers, or sell to factories at prices lower than the ordinary cost of manufacture. This has occurred in boot and harness trades, and to some extent in cigar-making. However, only a few industries lend themselves to this process of dispersion. No handworker can compete with the products of power machinery.

"Testimony as to the influence of the boards upon sweating and Chinese competition varies. Both continue to exist in Melbourne. I have seen large bundles of clothing going out of factories, to be made up by contractors who were evading board determinations. Few, if any, strikes have occurred where wage determinations are in force.

276 (f). Exceptions allowed.

"All the Australasian laws give the regulating authority power to fix a lower rate of pay for slow, aged, and infirm workers; but this is not a sufficient remedy. Employers refuse to receive slow workers in their shops, because they slacken the pace of other workmen. Moreover, the formalities required to secure slow-worker permits embarrass both employee and employer.

"Therefore, state regulation of industry places a burden upon the weaker members of society."

Apparently, then, one effect of state regulation of wages, even in its short experience, is just what the American trade-unions are working hardest against—it is concentrating industry and leaving the slow workman in the lurch.

276 (g). High prices resulting.

And to the concentration of industry threatening to develop into the trust, to unemployment and to the sweat-shop, are added high prices which nullify a raised income to those who have it, and are a hardship to those who have not:

"All regulations restricting the freedom of employers in conducting their business probably add to the cost of production.

. . . Therefore industrial regulation increases the cost of living. . . . The Secretary of Labor in New Zealand says that 'It has helped to minimize any advance in the workers' wages'."

276 (h). Bolstering up needed. Already efforts are in progress to bolster up a policy from which so much was hoped, but which even now, in these important respects, seems a failure. Already loom up the usual artificial remedies to remedy a remedy.

"The wage-earner is the direct beneficiary of the minimum wage; the farmer pays the increment to the cost of production resulting from laws and awards, directly to his own hands, and indirectly in a higher price for commodities. . . . The farmer cannot recoup himself by adding to the price of his produce, for that is determined in the London markets. . . . The farmers of New Zealand and Victoria, where the rural classes are relatively the most influential, have already organized an active campaign in opposition to the labor party. Likewise the factory operative whose manufactures are exported, or meet the competition of imported articles, cannot employ an arbitration law to raise his nominal wages without lessening employment and defeating his own end of social betterment. But he, like the farmer, must pay the increased price for local services and products which such a law occasions, and thus his real wage is lowered by the very legislation that was devised for his welfare.

"The discretion of the judge checks many economic evils that might result from state regulation of industry. The increase of prices is beyond the court's control. . . .

"Parliament was asked officially to remedy an evil by which 'the advantages bestowed by progressive legislation are gradually being nullified and will eventually be destroyed'. A similar demand has been made in Victoria, where it is claimed that so long as the government fixes wages, it should also fix prices [which, outside of a few monopolies, no government has been able to do in all recorded time]; for the free manipulation of the latter may render ineffective any regulation of the former. The same suggestion has been voiced as a future possibility by the leader of the labor party in New South Wales.

276 (I). Points to state employment and socialism. "The responsibility of the state for a living wage, logically leads to the responsibility of the state for employment at that wage. If these two functions of government are generally recognized as moral duties, and are realized in political action, the result is state socialism. . . . Broader knowledge and profounder study than have yet been devoted to this subject are required to give us conclusions of value."

**277. Statute law
and natural law.**

The provisions for "slow workers" certainly look as if the law had begun in an effort to rise superior to Natural Law, and, as always happens in such a case, were being perforce tinkered back into conformity with Nature. This gives a very discouraging outlook for the working of the Minimum Wage scheme, but while all caution should be used not to go counter to Nature, it should never be forgotten that Nature's processes, when ascertained, can be aided by human intelligence and sympathy, and that in social affairs, experiments are as justifiable as in mechanics and chemistry. But extravagant and explosive experiments are foolish in all. More in regard to the experiments of the Minimum Wage will appear as we discuss the functions of the Arbitration Courts.

A decreed and enforced wage can make employers prefer to stop business, or can make employees prefer to beg; but it can never secure the payment of wages materially different from what would be secured by the laws of supply and demand acting in a medium of fluid competition. The only legitimate function of Arbitration Courts (but it includes many others) is to keep competition fluid. This will give them enough to do, and give them glory enough if they do it. In doing it, they inevitably do all the rational work that Minimum Wage Boards can do, which fact is abundantly proved by the ease with which the courts are absorbing the functions of the boards.

**278. The Arbitra-
tion Courts.**

Regarding Arbitration Courts, as Australasia, like the United States, is made up of a number of commonwealths passing most of their own laws, there has been a variety of experience, which now includes experience under a general law for the whole colony.

Unlike America, where the immigrants have brought in a large element of Latin imagination and German sentimentalism, Australasia has little imagination, sentiment or theory, but a very large element of hard-headed British common sense, and circumstances peculi-

iarly favorable to its exercise—a homogeneous British community, plenty to do, a minimum stupid and venal vote, a British respect (which far surpasses our alleged one) for education and experience, and (partly in consequence) a salutary scarcity of the ranter and the demagogue. The curse of the relations between Labor and Enterprise has been that poisonous product of rank democracy. He thrives on struggle: arbitration has no place for him; he is opposed to it. His attitude is that the relations between employee and employer are those of irrepressible conflict over the product. Mr. Gompers, the present successor of the long line of failures at the head of American Labor, has said: "It is a fight." But it is a fight in which, as a *fight*, Labor can never have any permanent success, for the simple reason that as fast as Labor develops honesty and brains, the bulk of them insensibly drift to the other side, in the ranks of the employers. The employers who were not drawn from Labor's ranks are too few to be worth taking into account. While the labor-leaders fatten on conflict, for the men there is no visible hope quicker than their slow advance in productive capacity, and the slow increase of fluidity in competition, of justice and of sympathy, unless that hope be compulsory arbitration.

The hard-headed Australasians seem to have realized all this, and never to have had any use for Mr. Powderly or Mr. Debs or Sam Parks or Mr. Gompers with his "fight". After a few strikes that were passing zephyrs in comparison with some that those men have stirred up, the community in general, apparently including a large proportion of the working-men, did not propose to have any more fight. They began with asking the two sides to arbitrate, and giving them facilities, and when that scheme would not work, they forced them to arbitrate. The general motive of the arbitration laws was to protect the community and the men's families from the follies of strikes. There seems to have been no claim made that the men were not at liberty to damage merely themselves.

278 (a). Started to prevent strikes.

It will help the reader to understand the development of the courts, to be reminded again that the colony is a federation of states somewhat like the American union. Of these, on the continent of Australia are five, namely, Western Australia, South Australia, Queensland, New South Wales (capital, Sydney), and Victoria (capital, Melbourne). Something over a hundred miles south of the continent, lies another state, Tasmania, and some twelve hundred miles east of Australia, and a little south, is still another state, New Zealand. On the eastern side of the continent are the continental states New South Wales and Victoria, nearest to New Zealand, which share with it the leadership in population, wealth, and activity in social experiment. A little care in memorizing these simple facts will be of service as we proceed.

The first Australasian experiment of note in Compulsory Arbitration, was New Zealand's Industrial Arbitration Act of 1894, much expanded in 1900 and adopted in its main features by Western Australia and New South Wales.

<sup>279. Ineffectiveness
of Voluntary
Arbitration.</sup> Efforts have been made in almost every civilized state to reconcile labor disputes by boards for voluntary conciliation, such boards being often established by legislation. In cases of little importance their awards have been often accepted; in cases of great importance, seldom. President Roosevelt's coal-strike commission recommended statutes authorizing governors to appoint "commissions of compulsory investigation" with full power of calling witnesses and examining them under oath, when labor disputes threaten serious disadvantage to the community. The mere reports of such commissions would do something to settle disputes, without compulsory arbitration. Nevertheless after several serious and disgraceful strikes in Australasia during the earlier nineties of the last century, Mr. Reeves, the New Zealand Minister of Labor, made a very thorough study of all that had been done anywhere by way of arbitration and conciliation, and concluded that for the award

to have any effect, it must be compulsory, or at least that nothing worth while had been accomplished where the award was not compulsory, a main difficulty being that it was very hard to get either the party with the weak reasons, or the one with "the heaviest artillery", to go into court.

<sup>280. The first
Compulsory Arbitration Act.</sup> So in 1894 Mr. Reeves laid before the New Zealand Parliament a Compulsory Arbitration Act. It begins to look as if this step in the little parliament of an island in the Pacific, which to the vast majority of the civilized world is little more than a name, may yet be regarded as one of the most important of the world's pieces of constructive legislation. I am not prepared to suggest that it probably will, but I suspect that it not improbably may. This suspicion I have reached after a very full faith in its impracticability, based on *a priori* considerations, followed by a study of its actual results, including those of similar acts in Australasia which have sprung from it.

Among a great many wise and careful details, the act provided that the court should be appointed by the Governor General, and consist of a Judge of the Supreme Court, a representative of workingmen to be chosen from a list submitted by them, and a representative of employers similarly selected.

<sup>280 (a). Recognized
only Unions.</sup> Operatives could appear before the court only through their unions. This not only to avoid petty disputes, but because all troubles worth avoiding have hitherto come from unions. If any men are in danger of losing their chance in court, the law requires unions to admit members freely, and but seven men are required to form a union where none exists.

Employers could appear individually or in organizations.

The tendency was to favor unionists as against non-unionists, because the former must bear the brunt of the contentions. Non-unionists could not go into court,

and consequently could not hale their employers into court, but they were free to strike.

The court could decide or dismiss any question brought before it, and there is no appeal.

Powers of summoning witnesses and getting expert advice are similar to those of courts in general; even additional members of the court could be elected in special cases.

Books of account could be called for, but examined only in secret. Yet rather than produce their books, employers have sometimes come to an agreement with their men—and in one case at least, an agreement which was renewed.

Mr. Lloyd, who wrote in 1890,* and from whom most of the facts regarding the Arbitration Courts up to his time, have been taken, says:

'It is a curious phenomenon of antipodal public opinion that America is being swept by waves of opposition on one side of society to trade-unions and of opposition on the other side to unions of capitalists, while in New Zealand the people and the government favor the fullest organization of both.'

This raises the interesting question whether with courts in which to fight out their differences, the two extremes of the industrial world might not keep each other's excesses in order, without the rest of the community being troubled with either.

280 (b). Could dismiss trivial claims. Objectors to compulsory arbitration trusted the tendency of the workmen to appeal to the courts on worthless grounds, and to expect from them impossible results. This fear has been to some extent justified; but men will not risk strikes for reasons as worthless as some that lead them to seek arbitration. Yet certainly in many cases, arbitration takes the place of strikes, and is vastly preferable to strikes.

280 (c). Damages. Many students of such matters—probably it would be safe to say most—among whom I confess myself to be one, believed that the

* "A Country without Strikes", by Henry Demarest Lloyd.

compulsory courts would be ineffective, mainly on the ground that nothing could be recovered when damages were given against people who had nothing. But our expectations have been confounded, in that there have been no occasions to decree very serious damages. Occasions for great damages, like strikes, boycotts and arson, have been taken care of by the preventive ounce of argument and adjudication, rather than by the curative pound of damages.

280 (d). Faithful acceptance of decrees. Another objection was that men may be compelled to work, but cannot be compelled to work efficiently. Yet a good

deal of efficient work has been done under the coercion of the lash; and a good deal more under the coercion of the stomach; and the coercion of a respected court where one has been fairly heard, hardly seems more repugnant than that of an unsuccessful strike, especially as bitterness has seldom been engendered in reaching the conclusions of the courts.

As it has been objected: "You cannot collect damages from the poor and you cannot force them to work well if they do not want to," so it has been objected: "You cannot make men conduct business under conditions which they consider unfair." Yes, you can: they would rather put up with considerable injustice than have their capital and their brains lie idle. But they need not be irked with much injustice or even with any, under compulsory arbitration: all these objections have been against extreme possibilities, which, with capable and well-meaning courts, have seldom occurred, and as the courts grow in experience, are occurring more seldom.

Mr. Reeves wrote to the London *Times*:

"Why assume that the awards of a competent tribunal will be intolerable to one side or the other? It is likely enough, nay, certain, that all awards must be disagreeable to somebody, but intolerable is a word which presupposes that awards are likely to be made which will involve one side or the other in ruin, or drive it to desperation."

280 (e). Competence of courts in business affairs.

Another objection was that you cannot fix wages by law; and it was well taken, if you try to fix them counter to natural law. But the object of the court has been to ascertain from very thorough investigation what wages naturally should be, and so decree them. Probably the job is generally better done in that way, than through a strike or a lockout.

It has also been urged that you could not get practical business wisdom out of a court. But the world has been doing that for a good many centuries, and that, too, before, as in Australasia, business men were made members of the court, with power to call in others as need might arise.

280 (f). Effect on strikes.

The New Zealand law left the parties to fight it out if neither of them cared to go into court, but they have generally preferred to go into court. Yet since the problematic law went into force in 1895, there has been among the men subject to it (the public railroad employees in the strike of 1903 were not), no labor disturbance which an American would dignify by the name of a strike. But Dr. Clark tells us that

"Even before the New Zealand act was passed, the relations of employers and employees in that colony were normally so harmonious that it is difficult to show positively that the industrial peace at present prevailing is due to legislation. In New South Wales and Western Australia strikes of some consequence have occurred in defiance of the court."

280 (g). Spread of the courts and unexpected activity.

But as kindred laws were enacted in other states of the federation, and finally in 1904 a general law for the whole federation, they have been obliged to go into court, but their doing so has seldom been with any reluctance. This is not the place to recount the differences in these Acts and their results. We have room only for such details as characterize at least the majority of them.

The Conciliation Boards in existence when the Act was formed, were not disturbed by it. Moreover, the court has a right to create minor boards of conciliation

and arbitration. An appeal from them to the Arbitration Court was of course allowed. Mr. Reeves expected them still to settle seven-tenths of the cases (probably relying on the coercion latent in the appeal), and one of the believers in the court, probably for the same reason, said that it would not be used once in twenty years. Up to 1900, instead of being restricted to a tenth of the cases, it had settled two-thirds of them.

280 (h). Both sides arranged cases to refer. An unexpected development was a tendency for employers to arrange with their men to get cases before the courts which would bring decisions controlling dishonest and sweating competitors. This effect was similar to that already noted in the case of the Minimum Wage Boards—in fact, seems to be another illustration of the tendency of the Arbitration Courts to assume the functions—indirect as well as direct—of those boards. Thus men who wanted to cut wages in order to cut prices, have often been restrained. The wisdom of the court has undoubtedly prevented this from being a serious damage to legitimate competition, yet on the other hand, its effect on prices has probably not invariably been for the good of the whole community, as already indicated regarding the Wages Boards, and as will farther appear later.

The courts provide rates "for superior, average and inferior men. No one can be employed for less than the average, except, as has been already explained, men not competent to earn the average, and the rate paid them must, if questioned, be sanctioned by the local Board of Conciliation".

The success of such an arrangement, should it continue, would seem to illustrate how a law that certainly never would, and hardly could, be *voluntarily* obeyed in spirit by those upon whom it is enjoined, can be helped into a working condition by a court well adapted to the requirements of the situation.

280 (l). Courts tried to follow the market.

Experience has abundantly shown that all the successful minimum-wage fixing must at best resolve itself into a declara-

tion, by an honest and painstaking authority, of what conditions point to as the natural rate of wages, and this certainly is a great deal better than a determination of them by boycott, arson and murder. Mr. Lloyd quoted an anonymous commentator to the effect:

"Compulsory arbitration does not attempt any interference with the 'law of the market'. On the contrary, it gives the 'law of the market' for the first time a full chance to work. It brings the 'law of the market' into full and free discussion."

"'Fixing by law' is an odious phrase. How about fixing prices by the fiat of a corporation or a capitalist, or by bayonets, or by starvation or intimidation? Here, 'law' means debate: the lack of it means destruction for the men. The law does not dictate or fix wages, but merely decides in a dispute between two different views of what wages should be. 'Law' fixes creditors' shares in bankruptcy, lowers Irish and Scotch rents, fixes the price of ferries, railroads, the salaries of state officials, rate of taxation."

280 (j). Court's power of initiation. As already said, the first court, in New Zealand, could be put in motion only by one of the parties to a controversy. But the present usage empowers a court to take up, of its own motion, any apparent industrial abuse. But even under the primitive practice, Mr. Lloyd was hopeful enough (He has often been accused of being too hopeful) to say:

"Trusts like those now coming into favor in England, such as that of the bedstead-makers of Birmingham, in which the masters and the men have united to fleece the public, would not be very promising subjects for compulsory arbitration."

He continues:

280 (k). Question of overcrowding. "Another objection often made is, that in consequence of the law, industry is disturbed by the frequency of disputes; but when I looked into the number of cases before the court, I found that there had only been about fifty in five years, about one case a month. . . . This, too, it is only fair to remember, is the number of disputes at the beginning of the administration of the law. Every decision that settles questions makes precedents that will prevent other disputes from being brought forward."

This is one of Mr. Lloyd's optimisms. In the half-dozen years since he wrote, things have moved fast,

and, as will be shown, experience has not altogether continued the rosy look which the experiments bore nearer their dawn. But while unanticipated difficulties and abatements have arisen, enough success to justify the experiment still seems possible. But there is abundant evidence that the courts have been sometimes overcrowded, and that too by questions so trivial that they have sometimes refused to consider them. He himself quotes a "labor member" of one of the boards to the effect:

"Agitators foment disturbances to bring the masters before the court. It is suspected sometimes that even members of the Conciliation Board, who are paid for the number of days they sit, do the same thing. But which is worse, that agitators should foment arbitration, or foment strikes?"

The effect of compulsory arbitration has been peculiarly happy on the condition of women workers. Even if Mr. Lloyd's pæan in his chapter "A New Song of the Shirt" was pitched some notes too high, there is no doubt that a pæan is justified.

^{281. Aspects in} The following passages throw much ^{1890.} light on the case, or at least on one side of it, as it looked about 1890.

"The subject came up one day in a group at the club in Wellington. One of the critics of the law quoted triumphantly from a letter of Lord Thring's: 'Is it conceivable that at the close of the nineteenth century either masters or men would submit to such a tyrannical judicial interference with their liberty?'

"'For five years', replied one of the New Zealanders, 'masters and men have been submitting. They may not be satisfied. Where anywhere are there satisfied capitalists or laborers? Where is there an employer who would not like to pay less, where the workingman who would not like to get more? But they are all at work, though not satisfied. In New Zealand it is proved that the Arbitration Court can make decisions which both sides would rather accept than to quit, as they always have the right to do'."

And now a word on one of the excesses of theory which the Arbitration Courts have stimulated. Mr. Lloyd stated it in perfect good faith, as follows:

^{282. A theory of wages and prices.} "The New Zealand court has but just touched in its decisions on the most important principle at issue in the regulation of wages—whether wages must follow prices or prices wages. Must wages be dependent on prices necessary to market commodities, or must these prices be dependent on the wages necessary to maintain the people in decent comfort?

"The workingman's mind is evidently moving to the latter position. Several of the greatest strikes of recent years, like the English coal strike of 1893, and the strike in Lord Penrhyn's quarries, have had the 'living wage' for their inspiring principle, and this new position of the workingmen in those strikes received the open support of some of the most influential members of Parliament, newspapers, and even capitalists of Great Britain.

"This doctrine seeks to make true the fiction of John Stuart Mill that wages are determined by the standard of living among the workingmen. What John Stuart Mill said was the law of wages, the workingmen are seeking to bring about. The New Zealand law, the moment that this new political economy that prices must follow wages invades the bench, can be made a powerful instrument in reinforcing the workingmen."

This is no more or less than one of the raise-yourself-by-your-bootstraps notions of which we see so many: somebody has got to pay those wages, and nobody has an unlimited store to pay them with.

Some of Mr. Lloyd's final conclusions in 1890 are worth quoting, partly as bases for comparison with later writers.

^{283. Mr. Lloyd's conclusions in 1900.} "There is only one Compulsory Arbitration law in the world, and that has been in operation only four years and in an isolated country, and we must not generalize too freely. Similar laws might operate differently in different countries. . . .

"Strikes and lockouts have been stopped.

"Wages and terms have been fixed so that manufacturers can make their contracts ahead without fear of disturbance.

"Workingmen, too, knowing that their income cannot be cut down nor locked out, can marry, buy land, build homes.

"Disputes arise continually, new terms are fixed, but industry goes on without interruption.

"The country is more prosperous than ever.

"Compulsion in the background makes conciliation easier.

"Compulsory publicity gives the public, the real arbitrator, all the facts of every dispute.

"Peaceable settlement with their men has been made possible

for the majorities of the employers who wanted to arbitrate, but were prevented by minorities of their associates.

"Humane and law-abiding business men seek the protection of the law to save themselves from destruction by the competition of inhumane and law-breaking rivals.

"The victory is given as nearly as possible to the right instead of to the strong, as in war.

"If the American people have any lessons to learn from these experiences of New Zealand, they can be trusted to learn them. The object of the writer has not been to enforce his views, but to present the facts of an interesting social experiment, on which the public could, if it chose, build views of its own.

"Of course, 'our circumstances are different'. Our circumstances have not been so different but that they have developed the same evils. Perhaps they may develop the same remedy.

"And as for the isolation, that is a fortunate incident for the weak, but the United States has a nobler kind of isolation in its might and wealth. It can stand alone for any cause it chooses to espouse."

At this point we turn more definitely to
284. Mr. Reeves Mr. Reeves,* the father of the New Zea-
In 1903. land Arbitration Act, whom future ages

may perhaps give a high place among the contributors to the welfare of mankind. His attractively written, instructive and interesting book of course is from his point of view, but it seems to be admirably candid. It appeared some three years later than Mr. Lloyd's, when Mr. Reeves's revolutionary Act of 1894 had been working eight years, and had become the parent of others.

285. Claims con- He tells us that from 1895 to 1900 under-
tinued success. the Act, factory hands in New Zealand increased from 30,000 to 49,000, and export trade grew from 1894 to 1901 nearly 50%; factories from 1896 to 1901 nearly 30%, and total wages paid nearly 60% (which seems to indicate an advance of nearly 20% in the *rate* of wages), and manufacturing output grew in the same time about 80%.

There had been but half a dozen strikes up to 1903. Half of these were among government employees, who did not come under the authority of the court, and nearly all were settled by voluntary appeal to the court.

* Reeves, William Pember: *State Experiments in Australia and New Zealand*, 2 vols.

In 1900, when propositions to thoroughly revise the act were before the legislature, only one man spoke unfavorably of it.

286. Judge Backhouse's testimony. In 1901 New South Wales was meditating a similar act, and sent Judge Backhouse, a cool, able and experienced man, to investigate the working of the court in New Zealand (1,200 miles off, over seas). His conclusions were:

"The Act has prevented strikes of any magnitude, and has, on the whole, brought about a better relation between employers and employees than would exist if there were no Act. It has enabled the increase of wages and the other conditions favorable to the workmen which, under the circumstances of the colony, they are entitled to, to be settled without that friction and bitterness of feeling which otherwise might have existed; it has enabled employers, for a time at least, to know with certainty the conditions of production, and therefore to make contracts with the knowledge that they would be able to fulfil them; and indirectly it has tended to a more harmonious feeling among the people generally, which must have worked for the weal of the colony. A very large majority of the employers of labor whom I interviewed are in favor of the principle of the Act. One only did I meet who said out and out, 'I would rather repeal it and have a straight stand-up fight', while another was doubtful whether the present condition was better than the pre-existing. The first, in a letter, has since considerably modified his statement."

Mr. Reeves thinks this "too roseate a view of the feelings of employers."

In 1901, Judge Backhouse's report was followed by a Compulsory Arbitration Act in New South Wales; one was passed in Western Australia in 1902, and one for the whole federation in 1904.

These Acts differ much in detail, which of course cannot be entered into here, but they are a necessary and far from unattractive study for any one wishing to promote the substitution, anywhere, of law for war.

287. The courts to keep the peace. The New South Wales Act does not make it necessary for either party to a quarrel voluntarily to go to court before the court can act: the registrar may call the parties into court, and this on the grounds as stated by Mr. Wise, the framer of

the Act, that "combatants who are bringing an industry to a dead stop should be regarded as brawlers in a street who check traffic with their quarreling: they should be made to move on."

Mr. Reeves says:

288. Details by Mr. Reeves. "It will be urged, doubtless, that until some body of men has doggedly, or perhaps violently, refused to obey a compulsory award and been forced to the knees by legal process, the strength of the Act will not have been thoroughly tested. Might it not, however, be urged that the true strength of the Act is being shown by the absence of such incident? Does not the growth of a habit of peaceful acceptance of decisions hold out the best hope of ultimate success for the system?

"Passing from objections, it is safe to say that the experiment seems on the way to prove several useful points. First, it shows that trade-unionists may be persuaded by the logic of experience to prefer arbitration to conflict, and that their unions may grow and prosper in consequence. Next, that the compulsory decisions of a state tribunal may be quite as just and moderate as those of a private conciliation board, and that obedience to them need not mean ruin to an employer, or cruel hardship to work-people. Next, the working of the Act has not strangled industry or fettered enterprise; trade and business have steadily improved under it. Lastly, instead of it being found impossible to assert the Arbitration Court's authority, there is no serious difficulty in enforcing its decisions; indeed, the enforcement of awards, which is assumed by English *a priori* critics to be out of the question, has, so far, been found in practice to be by no means the most troublesome part of the work of industrial arbitration."

In 1903, Mr. Reeves left the laws in the following condition:

"Though not yet twelve months old, Mr. Wise's Act has already ceased to be the newest arbitration law in the colonies. The West Australians, finding their Act of 1900 defective, decided not to amend but to repeal it. Accordingly, in February 1902, they displaced it with a new enactment which followed more closely the New Zealand model. It is noteworthy that, despite the example of New South Wales, this statute makes provision for boards of conciliation."

289. Dr. Clark In 1906 not quite so optimistic.

Next, in 1906, Dr. Clark * takes up the narrative. He wrote when the courts were of course much more developed,

* *Op. cit.*

and I shall quote from him farther details of their constitution and working in their developed shape, as well as the latest results, which are not in all respects quite what the earlier writers counted on. As the brief quotations cannot do justice to his fuller exposition, I shall emphasize an occasional point by italics not his. The reader's patience is invoked for some repetitions arising mainly from comparisons with earlier conditions, and from the increased number and variety of the courts.

As now constituted, the Arbitration Courts have all
290. Courts now the powers of ordinary courts, and their
have legislative decisions are not subject to appeal unless
power. their interpretation of the act creating
them is in question. They have also legislative power:

"The general intent of the law is to give the court power to settle every point that might cause a strike or lockout. [The government employees were not subject to compulsory arbitration, and] a strike, in 1903, tied up the transportation of Victoria. This disturbance was accompanied by incidents that would have rendered the strikers liable to penal punishment in America, and would have been disconcerted by our trade-unions. Trains were deserted by their crews wherever they chanced to be when the strike began, stranding passengers and perishable merchandise in out-of-the-way places, and endangering life and property. The public answered this

291. Laws against challenge to its authority by a strike law more
strikes. drastic than any legislation ventured by Americans in the most acute crises of their civil war.

This law imposed a penalty of nearly five hundred dollars or twelve months' imprisonment for engaging in a strike on government railways, and made men liable to arrest without warrant or bail for advising a strike orally or by publication, or for collecting funds for the support of strikers, or for attending any meeting of more than six persons for the purpose of encouraging strikers.

"Arbitration acts derive their authority from the police powers of government. They are measures to prevent industrial disorder. . . .

"The New Zealand law prohibits . . . strikes and lockouts . . . while proceedings relating to the dispute are pending, and for a sufficient time beforehand to allow either party to begin proceedings if he so desires. . . . The new federal Act prohibits strikes and lockouts *unconditionally*, without regard to whether they are begun prior or subsequent to giving an award.

292. Current law prohibits sympathetic strikes.

"The [New Zealand] law prohibits strikes and lockouts among workers and employers *in related industries*. Parliament has defined all building trades as related industries. The court may extend this provision to other groups of employments. Consequently if an award has been given in the bricklaying trade, for instance, the mortar-mixers or the hod-carriers cannot tie up that trade by a strike, although unwilling to lay their case before the court.

293. And makes awards binding in adjoining districts.

"A second contingency bringing parties involuntarily under the act, is where an award has been given in their industry limited to some *other* portion of the colony. The employers or workers subject to the award might be injured in such instances by the competition of employers or workers in the districts not subject to its provisions. If so, they may have the award extended to establishments in the competing district. The purpose of this extension is not to prevent strikes, but *in equalizing competition* they are *incidentally prohibited*."

This provision has been abused by starting a strike in one jurisdiction where a certain decision may be expected, in order to make the decision effective in an adjoining jurisdiction where it probably could not be obtained.

294. Awards evaded.

As was to be expected, the stringent control of the Arbitration Courts is often and easily evaded. Dr. Clark gives an illustration:

"A service may be embodied in a commodity, and transferred as an element or quality of a material object. To illustrate concretely, an arbitration court may fix a day rate to be paid to saddlers, and a piece-work rate for every operation of making a saddle; but its jurisdiction does not extend to regulating the sale of the leather, saddle-tree, and other materials out of which a saddle is manufactured, or to the sale of a completed saddle. Therefore, a manufacturer may sell these materials to a workman, and the latter may sell the finished product to the manufacturer at a higher price than the materials cost, but at a lower price than the cost of making prescribed by the court plus the cost of the materials."

Regarding the immediate effects of the decisions, he says:

295. Hard to fit conditions.

"It is impossible to give an arbitration court a course in technology with each new set of proceedings . . . The court's decisions seldom

adapt themselves perfectly to working conditions, and continue to be a chafing shoe upon the feet of industry.

"A dispute before a court is less serious than a strike. . . .
 296. Danger of over-regulation. But these suits occasion expense and loss of time, and check industry so far as they render uncertain future conditions of production. There are single employers in Australia who work under as many as seven awards. The total effect of having these disputes constantly at issue—and they may await decision a year or more—resembles that of an agitation for tariff revision in the United States.

'Litigation is multiplied, because workmen will bring a case before the court where they would not risk a strike. So great is this evil that the court in New South Wales has recently adopted the policy of giving artificially created disputes no standing in fact. It has been proposed to require the consent of a large number of workers to start a dispute. But these are palliatives, not remedies. . . .

297. Promotes centralization of Industry. "Uniform conditions of employment favor either the big or the little proprietor more than his competitor. . . . Large merchants and manufacturers are said to have entered into collusive agreements with their employees to secure orders from the court detrimental to their smaller competitors. . . . Consequently, an economic tendency of industrial regulation is to centralize industry."

The very result that all the fierce agitation against trusts in the United States is seeking to overthrow!

To this significant objection from the worker's side, Dr. Clark adds:

298. And uniformity of wages. "As the average workers are in a majority and control the unions, . . . their influence alone shapes the policy of the arbitration authorities from the side of the workingmen. This influence secures conditions of employment that discount exceptional ability, and deaden the enterprise of more ambitious workers. . . . The value of their potential excess of service is thus lost to themselves and the community. . . . [The court] cannot reverse the laws of gravity and enable the working people to raise themselves by their bootstraps to a higher economic plane. Its orders must conform to economic law, or be speedily rendered ineffective by contact with stubborn facts. Consequently, awards ultimately become mere formal statements of average conditions of employment."

299. But so minimizes oppression. In other words, the courts and Minimum Wage Boards have wrought all these evils,

and their decisions might appear to the superficial to amount to nothing after all. But that would be really a superficial view: for it is by disturbing "average conditions of employment"—which means the average flow of supply and demand—that injustice is wrought. If a court can conserve average conditions, it accomplishes a great deal.

"The chief economic benefit workers derive from them [the courts] is that they render conditions of production sufficiently uniform in different establishments to keep unfair employers from obtaining a competitive advantage by oppressing their employees. Although the court's influence upon the average economic condition of the working people may be unimportant, it can effectively prevent unwholesome inequalities in their condition. . . ."

Now he comes to the fundamental difficulty in all arbitration (268):

"An arbitration law does not, however, rest 300. Only one side equally upon employers and employees, because the former are held to its strict observance by their financial responsibility, while workers can evade many of its provisions. In minor matters, the sanction behind the court's orders, so far as it applies to workmen, will always remain to a large extent a moral one.

*301. But moral
sanction often
effective.* "But possibly this appeal to the honor and civic responsibility of the worker is a more adequate influence in favor of industrial peace than harsher measures. These laws do appear—in spite of the occasional defiance of their orders—to increase the law-abiding spirit. The public opinion of workingmen supports their observance as a matter of principle. Whether the strike as an instrument for enforcing labor demands falls into absolute disuse or not, this spirit is a social gain."

And he repeats that the courts have diminished strikes and sweating (despite a somewhat inconsistent showing made earlier [276 e]) and child and female labor, and hours of work—the first two certainly a direct gain, the last two, results that attend the progress of civilization everywhere.

The effect of the Minimum Wage Boards on prices (276 g) is continued by the Arbitration Courts, and more schemes in palliation or offset are arising.

**302. Continued
high prices and
palliatives.**

"But in time the people who are not employers or wage-earners, especially the rural population, may resent paying high prices for services and commodities, in order that employers and employees may enjoy state-protected privileges. A popular demand may then arise for more regulation, for some method to protect the rights of the consuming public—the farmer, the professional man, and the person of small property. This might manifest itself first in laws to control prices, already suggested [and commented upon (276 h)], or for the state housing of citizens—cently inaugurated as a remedy for conditions caused in part by arbitration awards in New Zealand—or for the erection of state industrial establishments to compete with those reaping a large profit under tariff protection and award control."

The Paris workshops again! tho, it must be admitted, with side issues—state housing and state competition with monopolies, which have aroused the enthusiasm of many people who rejoice in old expedients with new faces—especially when they do not know them to be old.

Elsewhere Dr. Clark says:

"No error could be more pernicious than to assume that these laws have fully justified themselves by economic and social results. . . . The coming story of the labor party will be a record of failure as well as success. . . . Nevertheless it has won to its main proposals the support of all political parties, and of the great mass of the people. None of the parties now opposes compulsory arbitration or old-age pensions. . . ."

Perhaps it would have been wiser to say, instead of "now opposes", yet opposes. For I have already quoted passages abundantly showing that opposition is brewing, tho it has not yet become strong enough to appear in the platforms of any party.

And now we have reached a set of considerations beginning to diverge from the merely economic:

**303. Courts con-
sider cost of living,
and profits and
all conditions.**

"When an award is under litigation workers often support their claims by testimony as to house rent and the cost of staple household articles. *The principle of a living wage is therefore fully established in arbitration precedents.* The judge usually follows the theory that such a wage is a first

charge upon an industry, to be imposed if the business is to continue in operation. . . . Dividends and other evidence of the earning power of a business are admitted as having a bearing upon an equitable wage for employees. The court thus fixes the share of the profits of an industry which the worker shall enjoy. . . . The court has considered such questions as the speed at which machines are to be run, the number of men to be employed to a machine, and whether men working in the open air, or their employer, shall decide when it is too wet to labor.

304. Startling dec- "The chief justice of New South Wales said
laration of court's of the act: '*It deprives the employer of the conduct
 powers.
 of his own business, and vests the management in
 the tribunal formed under the Act.'*'"

The laws of two of the states

305. Supports the closed shop—con- "expressly state that the court shall have power to give unionists preference of employment, though this is not mandatory. In Western Australia a similar clause was defeated by the protracted opposition of the upper house of Parliament. In the federal law the power is granted conditionally, but it is required that the union shall not engage in political activity while enjoying preference, and that this privilege shall be given only when, in the opinion of the court, a majority of the workers in the occupation regulated by the award approve of the claim for preference. The court in New Zealand has established its right to prescribe that non-unionist workmen already employed when the award goes into operation shall join the union as a condition of retaining their positions. On the other hand, the court usually provides that the union shall have preference only so long as it admits any applicant of good character to membership, upon payment of moderate fees fixed by the court. . . . The stronger organizations had enforced the closed shop in Australasia before the court was established, and refuse to relinquish what they consider a vested right. They further claim the privilege of raising the issue in court, because it is a recognized issue in strikes. The men also assert that preference is just, because only unionists incur the expense, and the odium with employers, of securing awards, and are liable to penalties for breaking the awards.

306. Favors politi- cal and class legis- lation by courts. "The most important objection to granting preference to unionists arises from the organic connection between the unions and the political labor party. Preference to unionists is preference of employment to members of a political organization."

After learning all this, it is startling to find that

"The proportion of the whole population in such unions varies from a trifle over three per cent. in New Zealand to nearly seven per cent. in Western Australia."

And does not all the foregoing mean class legislation? Dr. Clark seems to think it does:

"So at present the government orders business to be conducted according to the demands of particular classes. The interests of classes rather than of the public are consulted.

"American judges hold that the legislature cannot make laws affecting the interest of a *particular class*—set apart from the whole body of citizens. These decisions have prevented laws in favor of or against members of trade-unions, and might apply to prevent compulsory preference of employment even to members of a quasi-public society like an industrial union."

The Arbitration Courts have, as already said, many legislative privileges:

"As a lawmaker, the court is the mark of virulent and partisan criticism, and its orders are subject to the same public comment and discussion as other legislative or administrative acts, while in its purely judicial capacity it receives the respect usually shown to a dispenser of justice. . . . In an important mining case . . . a newspaper commented editorially upon the merits of the issues involved. The paper was warned that it rendered itself liable to punishment. . . . The ^{307. Curtails} freedom of the press is thus curtailed by applying to a *legislative* body protective canons of law devised to procure uninfluenced and unimpeded channels for the *administration of justice*.

"However, in response to practical considerations, arbitration laws are evolving toward a separation of judicial and legislative powers. . . . Breaches of awards are prosecuted under an action of mixed civil and criminal character, and the defendant, if convicted, is adjudged to pay costs, and an additional sum partaking of the nature both of a fine and of an award of damages. Such a 'penalty' is made payable directly to the plaintiff."

Dr. Clark, it is very important to realize, has shown that the effective administration of the law seems to require proceedings that attack what have heretofore been considered the foundations of civilization, and that, like the attempts to secure equal fortune to unequal men, give an impression that to justify such risks,

the advantages of compulsory arbitration need to be almost incalculably great. Dr. Clark next gives still more startling testimony to the same effect:

308. And "the obligation of contracts".

"Wherever compulsory arbitration is in force, the court finds it necessary to annul or modify existing contracts of service, against the will of the parties, tho these contracts are not in themselves illegal."

"An industrial agreement is a contract approved and sanctioned by the court, and might therefore be supposed to enjoy special immunity from alteration. In Western Australia the court has held that it cannot modify an industrial agreement without the consent of all the signatory parties. But elsewhere the court has amended these contracts, or substituted awards in place of them. . . ."

All this would not be tolerated under the Constitution of the United States, which does not permit any state legislature even, not to speak of any court, to pass a law annulling the obligation of contracts.

"Tho a legislature might declare certain classes of contracts in the future illegal, no law could be made so sweeping as to deprive all citizens of the right of making individual contracts of service, without causing a revolution in our [American] system of jurisprudence that would encounter the veto of the higher courts."

But Dr. Clark has more to say:

"Compulsory arbitration and private contract are in the widest sense contradictory. Their mutual opposition continually creates new problems for legislators. . . . These laws revive the old historical struggle between contract and status. They reverse the process of evolution of private rights in European and British law."

Does this mean simply a relapse toward barbarism? The reader new to the question is advised to read again Chapter XIII before continuing.

The attacks on Freedom of the Press and Freedom of Contract, are accompanied by another attack on what have been supposed to be the bulwarks of liberty:

309. And the right of assembly.

"Rival unions have occasioned some of the most bitterly contested issues under the arbitration laws. The bogus union, formed by a

small group of employees disaffected with the existing organization, with the connivance of employers, and used to defeat or hamper the operation of the law, has been the subject of parliamentary investigations in New South Wales. Therefore the state is forced, in its increasing control over labor societies, even to limit the right of free association among workingmen. . . . The total effect is to make the condition of status more rigid."

Next we come to something perhaps more startling still:

"The Australasian legislator has not been restricted in enacting arbitration laws by constitutional limitations such as exist in the United States. . . . In most [of those] states no power exists to create a tribunal with the right, without a trial by jury, to punish misdemeanors, impose a fine of nearly five thousand dollars, or even as a last resort to imprison offenders."

Is this Good-bye to trial by jury? Australia is progressive. But the experiment is new, and conditions are difficult.

311. Attacks on Liberty not pre-meditated. But Australasians did not know where they were going.

"The colonies did not enter on this legislation with clear foresight and purpose. The form and effect of these experimental statutes were not pondered with the care devoted to a revolutionary programme. The proposer of the New Zealand law stated in the debates upon the bill, that a vast majority of the disputes coming before the authorities would be settled by conciliation, without recourse to the court. The function of the latter body was not regarded as legislative, but as purely judicial—or rather as also conciliatory. The purpose of the law was to bring men to a voluntary agreement. *It was to further, not to annul, the principle of private contract.* . . . The development of this legislation, however, has been in another direction. . . .

312. New conditions, unexpected results. "Workingmen have applied for nearly all the awards granted in New Zealand and Australia. Their demands, when they file an application before the court, are not guided by past conditions. . . . Therefore the court is obliged to make orders covering many points for which no precedents exist. . . . Statutory or customary law is not at hand to guide its decisions, and so must be

enacted. But a new body of legislation . . . requires constant amendment to correct the contradictions and omissions that reveal themselves in practice. The legislative activity of the court is consequently stimulated from two directions, by the increasing demands of workers for better terms of employment, and by appeals from both parties to have conditions previously imposed made more workable.

"The divergence between the original theory and purpose of industrial arbitration, and its present development, is overlooked or disregarded. The final effect of this new institution upon private law and theories of government is not considered, because the popular attitude toward this legislation is opportunist and practical. But *the labor party, which is the most active supporter of industrial arbitration, fancies that it is a step toward state socialism.*"

314. Has experiment proved Socialism at war with Liberty and Progress?

And these steps toward state socialism are over what a labor agitator in other connections would be apt to call "the prostrate bodies" of trial by jury, of freedom of the press, of right of assembly, and of contract; and are of course steps back toward *status!* The contention that state socialism and *status* are synonymous terms, seems receiving a startling confirmation from experience, even before state socialism has become matter of experience.

After I first read, as a whole, the foregoing condensation from Dr. Clark's book, I wrote to him that I did not before know what a terrible indictment of government control of industry the book contains. That the extracts turned out an indictment was due, however, to no will of mine. I tried to be as fair to both sides as he is.

Either the indictment is terrible, or the experience of thrice ten centuries through the whole world, has been shown to be foolishness, by ten years of experiment on three islands in the Pacific. And this remains true, even if the right of trial by jury is, as many sober thinkers suspect, outgrown in a fairly democratic state; and even if contract, like many other invaluable institutions, is capable, in abnormal conditions, of working injustice. But surely its abnormal conditions should

never be approached with a hand less cautious and reverent than the ideal surgeon's—or the ideal jurist's.

These most weighty considerations show plainly that in Australasia the thunder is rumbling. But as yet no bolts have fallen; Dr. Clark says:

315. No business disasters yet. "The evidence does not show a general setback from government regulation of industries. The investment of foreign capital may have been checked by the novelty and uncertainty of this legislation, but local capital has been found to meet the demand of growing enterprises. The impression the country makes upon a visitor is not that of a land where industry is paralyzed and business stagnated, but rather the reverse. Permanent and costly buildings are being erected in the larger cities, public improvements are going forward, the wharves are crowded with shipping, the railway service is fully occupied. . . . There are few evidences of excessive unemployment. To a person studying conditions in Australasia, the economic argument that a country will be industrially ruined by state regulation is not convincingly demonstrated. But this does not prove or disprove the advisability of the laws embodying these experiments: for the argument in question is too general to be valid. The prosperity or depression of a country's business rests upon a broader basis than an industrial arbitration act."

316. Experimenting in prosperous times. Yet our author goes on to show what has been claimed before, that state regulations have not yet been tried under adverse conditions, but have been acting only in a period which other causes made one of great prosperity.

"Since the passage of the oldest of these laws, the Victorian Minimum Wage Act, federation has been accomplished, and a national tariff with free trade throughout the Commonwealth has been substituted for a local tariff and free trade only within the borders of the colony. This enlarged market has caused a great expansion of manufacturing. The exportation to other states of the federation of twenty-four classes of locally made articles increased over one hundred and forty-seven per cent. during the first two years after the national tariff went into effect. . . . This has stimulated the demand for factory operatives and raised wages in many skilled occupations."

Yet one is not surprised to learn that

317. Disagreement "The economic effects of government regulation as to prospects. . . . The contention that the capitalist is benefited by having wages fixed and other conditions of employment determined by a government authority, is sometimes supported by plausible arguments; but it is contradicted by the attitude of most employers toward these laws. As a body, they oppose compulsory-arbitration and minimum-wage boards. . . . Probably the influence—good or bad—of state regulation upon the prosperity and development of industries has been exaggerated. . . . Indeed state regulation applies to the industries that are the main source of national income only to a very limited extent."

318. Increased fealty to Law. But whatever may be the gains or losses through the Australian labor legislation, even if the tinkering and expensive bracing it is already demanding, shall tinker and brace it into something else, or out of existence, one effect of it should be viewed in America with special hope and honor: for as Dr. Clark says:

"It is a law-abiding agency, and the forces that in other countries threaten to disrupt society, serve, in Australasia, only to strengthen social bonds."

Yet this does seem a little difficult to reconcile with what he expressly asserts of class legislation; restriction of freedom of the press, of assembly, and of trial by jury; and interference with contract.

But the dispassionate doctor's valedictory is:

319. The equilibrium of industry. "But if state regulation clearly fails to benefit wage-earners, the country will probably return to free private administration of industry. *The essential fact is that the present condition is unstable.*"

Knowing the policy of a set of doctors plainly not of his school, he adds:

"The workers are still confident that state regulation does help them, and will continue to do so. Therefore the limited experience with compulsory arbitration up to the present, suggests the possibility of a further development toward state socialism."

Like protective tariffs, and stimulants and narcotics—

when the amount in use is proved ineffective, give more!

^{320. The latest} As these pages are about to leave my word. hand, there comes through a correspondent of the London *Times* one of those messages, extreme on one side or the other which constantly emanate from Australasia.

As quoted by the New York *Times*, the correspondent makes out that

"Neither party is really satisfied with the state of things in New Zealand; both parties are, in fact, extremely dissatisfied. The Australian Minister for Agriculture, returning from a visit to New Zealand, has reported that he found the Arbitration Act 'working to great advantage.' The Secretary of the New Zealand Federation of Employers tells the correspondent that the employers do not agree with this view. The workmen, according to this authority, are 'assailing the employers, threatening to ignore the Act altogether, and to return to their old methods; there has never been any greater friction in labor matters than at the present time.' From the employers' point of view the Act has not made for better work or for improved methods, and it has not fostered trade. On the other hand, it has seriously increased the cost of production. This increase has been such that in those articles which New Zealand might be expected to export, such as clothing, woolens, timber and coal, she is unable to take advantage of her natural facilities. 'The history of the court has been increased importations and decreased local output.' . . . The Scamen's Union and the Otago Trades and Labor Council have in turn denounced the court."

^{321. Repair as likely as failure.} But despite frequent casual statements like this, and despite the deep shadows in Dr. Clark's thorough and dispassionate study, we are by no means forced to the conviction that the threatening aspects of government regulation must lead to its complete overthrow. The dangers are almost inseparable from so young an experience, and there seems to be no unescapable reason to fear that they are due to anything more than the excesses of youth, or that they cannot be remedied as experience accumulates.

As shown, most of the decisions have been in favor of the men, because the market has been steadily rising. Then if the principle of compulsory arbitration shall

turn out to be the colossal blessing to mankind which its friends claim, and which its enemies seem growing less inclined to dispute, the fact that it "happened" to be started at the beginning of many years of increasing prosperity, will be classed with such facts as Rome's unification of the civilized world when Christianity appeared—facts which, whether called "Providential" or by any other name, even the philosopher is tempted to accept as proofs of an order and beneficence in the universe wider than our everyday conceptions are apt to rise to.

322. Gains in prosperity may carry through adversity. What is to be the effect of compulsory arbitration on a falling market, yet remains to be ascertained. But the workmen have already had the discipline of eleven law-seeking and law-abiding years, to educate them to respect the law when it goes against them.

Of course the enthusiasts are tempted, in face of abundant other obvious causes for Australasia's progress during the last decade, to attribute it too largely to compulsory arbitration; but it would be a blind opponent indeed who would give that no place whatever among the favoring agencies.

Laborers everywhere of course expect that every new expedient is going to give them much more wealth than they produce, and they resort to each expedient to the absurd degree that is already troubling the Australasian courts. But that, tho one of the greatest of their troubles, seems sure to remedy itself.

Probably nearly all the excesses are due to trying to make the courts do too much. But it is far from proved that they can do nothing. To have virtually abolished strikes, and made the labor world law-abiding, is to have done a very great deal, and a great deal that we in America sorely need. We have already indulged in a good many futilities by way of voluntary arbitration, and a few successes, mainly in Massachusetts. But for labor's own sake, we need something stronger. Despite the demagogues who, honestly or dishonestly, make

their living by fomenting Mr. Gompers's "fight", strikes will not be tolerated much longer in America. The intelligence of the industrial world, and the common sense of the world in general, is but just organized against them. But the Citizens' Associations who propose to have regularity in their transit and supplies, and freedom from riot, arson and murder; and the Industrial Associations who propose to have Enterprise regulate enterprises, are spreading at a rate beside which the spread of labor organizations was at snail's pace. Possibly the demagogues, for the sake of holding their leadership, may fight compulsory arbitration until, as once in England, strikes may be abolished by law *without arbitration to fall back upon*. But apparently compulsory arbitration will come sooner or later: it is difficult not to have faith that the habit of seeking law, and understanding it, and abiding by it, which the labor world of Australasia is being trained in, will ultimately save its arbitration courts from such fatal excesses as now threaten, and make them an example that the rest of the world will be glad to follow as fast as institutions can be adapted to it.

CHAPTER XXIII.

PERSONAL PROPERTY (CONTINUED).

Proved Methods for Diffusing it more Evenly.

323. Progress In general. The coolie of China, the ryot of India, the fellah of Egypt, the peasant of Russia, are in a condition not very different from that of virtually all mankind a few thousand years ago, and that our own ancestors had not got very far beyond a thousand years ago. When we compare them with the present population of Japan, civilized Europe and civilized America, we realize that over a large part of the world, powerful agencies have long been at work for the betterment of man's estate. A little thought must convince us too that the betterment has been greater among the masses of mankind than among the few at the head. The average man's condition is now nearer that of the exceptional man, who is forced to respect his life, liberty and property, than was the condition of the feudal retainer who held all these things at the mercy of his lord. In the essentials of a healthy existence—food, clothing, shelter, sanitary surroundings, hospital facilities, education, the average man to-day is vastly nearer the favored man than he was not merely thousands of years ago, but centuries ago—yes, decades ago. Since the middle of the last century, there have rapidly accumulated figures which prove that even in that comparatively insignificant period, the progress is not, as might have been expected, correspondingly insignificant, but very significant indeed.

The agencies that have thus been distributing the good things of life, are of course innumerable, and the study of them is too recent, even could it possibly be adequate, to reach a very thorough knowledge of them. But we know some of them well enough to enable us to promote their efficiency.

Before proceeding, however, to such detailed consideration as we can give them, it is well worth while to pay some attention to the general facts which prove that there are enough agencies whose efficacy has been proved, to render foolish all headlong confidence in the untried quack stimulants which are constantly suggested.

But first let us realize that while we would like everybody to get rich in a generation, there is no way to bring it about: Nature has settled the matter in her own way: there is not ability to produce enough. The annual production of the country averages less than \$250 apiece, and, as we have seen, the accumulated wealth is but about \$1,200 apiece.

324. Diffusion of wealth depends on diffusion of Ability. A more general diffusion of wealth, then, must wait for a more general diffusion of ability to produce it. As already said, wealth is Nature's prize to stimulate energy, fore-thought, temperance and honesty—in a word, Ability.

Yet the man without ability gains much from the general progress of invention, and General Walker seems to claim * that he gains it all except a little of the inventor's share; but the doctrine is not generally accepted to that degree. Mr. Atkinson, however, quotes Bastiat with approval to the effect that "in proportion to the increased quantity and effectiveness of capital, the aggregate share of the annual joint product of labor and capital falling to capital, is increased absolutely, but diminished relatively. On the other hand, the share falling to labor is augmented both absolutely and relatively." The laboring man does plainly gain much: for his cottage to-day contains many comforts that the home of the rich lacked half a century ago.

* "Political Economy", Advanced Course, §§ 326-36.

In 1903 the Massachusetts Bureau of Labor Statistics issued a bulletin showing that of 45,780 persons in the state who had retired from business with a competency for the rest of their lives, 1,076 were laborers. Yet the world is still divided up among a small proportion of rich and a large proportion of not rich.

But the proportion is growing more favorable to the poor. When we were discussing the relations of labor and ability

325. Averages tend to rise.
(pp. 92-3), we took note of Galton's generalization that most men tend to be about average, and that the departures from average tend to be relatively few. From this it is obvious that most men's incomes must be about the average—some \$650 a year in America in 1900, and that those who have more, grow fewer and fewer as the incomes increase. Such is the condition at any given time, but there is a vastly wider generalization than Galton's, which, with the exception of that of evolution, is probably the most tremendous generalization yet given to the mind of man. I refer to Spencer's Law of Equilibration, which includes a corollary that under evolution, averages have a tendency to rise, and, in their progress, to include the individuals of the grades originally above them. Under this principle, if the dots in the supposed graphic representation suggested in the passage on page 93, could rise, the lower ones would, according to the law, rise faster than the upper ones, and the space occupied would continue to become narrower until in time all the dots would be concentrated on a line considerably higher than the original central horizontal line of the system. This new heavy line would represent all men having attained equality of ability, and consequently of fortune, and on a higher plane than any men occupied at the start. No civilization has yet been long enough to attain such a result, and it is vain to speculate whether any civilization ever will be. But the evolution of each civilization has been toward such a result, tho it has been reversed when the dissolution of the civilization set in. If, then, a nation is still

in the process of evolution, not yet having entered upon that of dissolution—if, for instance, the United States has not, as many fear, lost the preponderance of capable voters which started her evolution, and has not come under a government of incapable ones, which must initiate dissolution—if the country is still progressing, it is inevitable that the lot of average people should be improving, and that a larger portion of the people should be included among the average. For at least the fifty or sixty years for which the statistics are of account, they show these conditions to have prevailed; and there is enough general evidence from history, to indicate them to have prevailed, on the whole, among civilized peoples, since the dark ages.

326. Diffusion In- Not only is the whole world growing richer, but the wealth is becoming more evenly divided. The trade-unions, despite their frightful mistakes, have undoubtedly enabled the laborer to get more of the benefit of the laws of competition, as we have seen, and they are making him more of a thinking man—in the last decade, by making him a great deal more trouble to think about, but at the expense of being more of a discontented man. But discontent is a good thing, rightly used. It is the parent of effort.

327. "Rich richer and poor poorer" is not true in civilized countries. While "rich richer, and poor poorer" has all the authority of a proverb, the authority of a proverb is often very poor

authority. This one simply illustrates how a slick phrase takes hold of people. There is probably no greater error in economics, and yet none more generally believed. The facts are overwhelmingly against it. In the United States wages have risen an average of sixty-eight per cent. since 1860, and have nearly doubled since 1840. (On re-reading, I find this apparently self-contradictory, but take the figures at, say, 100, 110, and 200, and it will be found more than workable.) Even as late as 1880 the census gives the yearly average nearly \$100 below that of 1890—\$346.91 as against \$444.83. The com-

parison cannot be relied on as exact, but the correctness of its general showing is certain.

Prices have not risen with wages. They have gone down some eight per cent. since 1860. Leaving out luxuries, Professor Mayo-Smith * says that the "portion of family expenses directly affected by the price of commodities was as 94.4 in 1891 compared with 100 in 1880"; and of two hundred commodities *in most general use*, Mr. W. M. Grosvenor has computed that a dollar in 1885 would buy a quarter more than a dollar would buy in 1860: and the Maine Bureau of Industrial Statistics reported that in 1887 a dollar would buy as much of the mechanic's usual food-supply as \$1.20 would in '82, or \$1.30 in '77. This was, of course, probably due to cheapened transportation from Western wheat-fields and cattle-ranches.

In the early years of the twentieth century, for which statistics are not yet available, strikes have made a great increase in nominal wages, and a great increase in idleness. Both the wages and the idleness have had to be paid for in a consequent increase of prices, but this is obviously temporary. Later it will be considered more in detail.

The hours of labor average ten now; in 1860 they averaged eleven; and in 1840 nearly eleven and a half.

The proof of all these paradoxes up to 1894, is given in one of the most elaborate economic investigations ever made. It was carried on in 1892 and 1893 by a Committee of the Senate, whose reports of facts fill half a dozen large volumes. This report does not seem to need any backing up: for it is a mass of tables of carefully gathered facts; but it happens to be thoroughly backed by other investigations here and in other countries.

Some of the others here are that wholesale clothing dealers report a great increase in average size and

* In "Statistics and Economics", to which important work I am indebted for several other points and facts in this chapter, I am glad to find some of my own previous conclusions reinforced by his figures.

quality of clothes demanded, which shows that the people are better fed and exercised and better off. To come to reports of state authorities, in Massachusetts from '50 to '80, agricultural wages advanced fifty-six per cent.; from '60 to '83, general wages advanced over twenty-eight per cent., and from '60 to '85, those of mechanics twenty-five per cent.* In Connecticut from '60 to '87, men's wages advanced in the principal factories forty-three per cent., and women's fifty-seven, while their dry goods and carpets cost them more than a third less, but provisions about a tenth more. In 1860, a laborer on the Erie Canal got fifteen cents a cubic yard for shoveling dirt; in 1889, he got fifty cents. From 1831 to 1880, wages of cotton-spinners in the United States increased eighty per cent., while the price of cotton cloth decreased sixty per cent., and the average consumption per head doubled. Moreover, pretty much everywhere the proportion of operatives in the comparatively safe and agreeable and high-paid processes, has greatly advanced.

About 1890, a Massachusetts machinist said, publicly, in speaking of the state of affairs in 1842:

"The wages of a machinist in shop were \$1 to \$1.25 a day: one nabob of a pattern-maker received the great sum of \$1.50. They went to work at five o'clock in the morning, and worked till 7:30 at night, with an hour for breakfast and three-quarters for dinner. It was several years before we obtained eleven hours a day. It has now been ten hours a day for twenty-five years or more, and we grumble at that, tho we get more than twice the wages we did forty years ago; and we are hoping to get the same or higher pay for working eight hours. I know the condition of the machinist is better than it was when I first joined the guild; he has better pay, better houses, better education, better living. For my part, I don't want any more of the good old times. The present time is the best we have ever had, tho I hope no the best we shall ever see." (Quoted in Wells.)

* Most of the facts in this and the next two paragraphs are taken from "Recent Economic Changes" by the late David A. Wells—a book that no one interested in the general welfare can afford to leave unread.

In Massachusetts for the period 1829-31 the probated estates under \$5,000 were 85.6 per cent. of the whole, in the period 1889-91 they had fallen to 69.5 of the whole, while those over \$50,000 had risen from 13.4 per cent. of the whole to 27 per cent. of the whole.

In Great Britain from 1840 to 1890, the number of estates subject to succession tax increased twice as fast as population, while the average amount per estate had not increased at all. In an article in the Royal Statistical Society's Journal for June, 1895, Mr. Bowley gave figures indicating that "money wages increased 40 per cent. from 1860 to 1891, and considering the increased purchasing power of money, real wages increased 92 per cent." The eminent English authority, Mr. Giffen,* says that during the last half of the nineteenth century (that is, beginning earlier and continuing later than Mr. Bowley's figures), the average of wages in England nearly doubled, while the working hours have decreased one-fifth. When he first stated this, it was so generally doubted that he repeated his investigations with the same result.† Mr. Mulhall

* Giffen, Robert: *Progress of the Working Classes in the Last Half-century.*

† Sir Lowthian Bell, Mr. George Lord and Mr. James Caird have given facts in support of Mr. Giffen. (Wells.)

Mr. W. H. Mallock, after an elaborate investigation in the British Census reports, the details of which are given in his "*Classes and Masses*", states the following conclusions: "People who are in want of the bare necessities of life . . . if, whilst their own poverty remains the same, the riches of other classes increase, do, in a certain sense, become worse off relatively. . . . But this unfortunate class . . . has grown less and less numerous relatively to the entire population." This class "is not in any sense a sign or product of our modern industrial system. A similar class existed before that system . . . and that system has relatively reduced and not increased its numbers . . . and the real problem . . . is not how to interfere with the existing economic tendencies, but how . . . to bring the residuum under their influence." "The poor" (except those who have nothing at all) "are getting richer; the rich, on an average, getting poorer . . . and of all classes in the community, the middle class is growing the fastest." Since 1830 the population has increased "in the proportion of 27 to 35; the increase of the

said that in England a laborer who got two hundred pence for a given amount of work, from 1821 to 1848, got two hundred and eighty-five pence for the same work from 1880-83, while in the later period one hundred and seventeen pence bought as much grain as one hundred and forty-two did in the earlier period. In regard to beef, the showing was still more favorable. This cheap food was America's gift to the mother country. In 1815 there were 100,000 paupers in London. At the rate of increase of population in 1875, there should have been 300,000. There actually were less than 100,000.

section in question [the middle class] was in the proportion of 27 to 84." "The middle class has increased numerically in the proportion of 3 to 10; the rich class has increased only in the proportion of 3 to 8."

"From 1850 to 1881 the *working classes* have increased by about 15 per cent., whilst the middle classes have increased by more than 300 per cent." "The incomes of those with less than £600 have increased on the average something like 4 per cent., . . . while the incomes of nineteen-twentieths" of those who have over £1,000 a year "have decreased on an average over 7 per cent." "Landed incomes have not increased, but decreased by 14 per cent. in England, and by 13 per cent. in Scotland." The total income of the millionaires, "if divided among the population in equal shares, would yield each inhabitant a dividend of one shilling a month". "The working classes have increased in wealth far faster than any other class in the community." "In 1880 the income of the working classes was (all deductions for the increase of population being made) more than equal to the income of all classes in 1850." In 1881 there were seven thousand windowless cabins occupied by families in Scotland; by 1891, these had "almost disappeared; the one-roomed dwellings with windows have decreased 25 per cent.; the two-roomed dwellings have increased by 8 per cent., and the three-roomed and four-roomed dwellings by 17 per cent.". "The smaller businesses, instead of being crushed out, are increasing more rapidly than the population." "There is an increase of 15 per cent. in the school-teachers; . . . of 21 per cent. in the butchers, which shows the general increase of meat consumption; . . . of 26 per cent. in the doctors; and . . . of 53 per cent. in the persons who professionally minister to amusement." "The computed capital of the Post Office Savings Banks . . . in ten years has very nearly doubled itself."

In France from '53 to '83 wages advanced some sixty per cent., and in the principal occupations of women (outside of domestic service), they nearly doubled.

In Germany, labor statistics are not as easily within our reach, but income-tax statistics prove the same thing. In Prussia, from 1876 to 1888, Dr. Soetbeer (quoted by Professor Mayo-Smith) finds that the proportion of income-tax payers with their families, to the whole population, had increased about 22 per cent., that is from 2.3 per cent. of the population to 2.8 per cent., and that the classes which had increased at the most rapid rate were those with incomes of over \$500. And altho the most rapid increase of all had been in the class with incomes of over \$25,000, the average incomes of that class had decreased, thus showing both that more people were getting rich, and that the rich were not getting richer.

One fact general over all highly civilized countries shows that the details we have been going over, must, on the whole, be correct. It is that the consumption of food has been increasing faster than population. This cannot mean that the rich eat and drink more: for they ate and drank all they wanted before: so it must prove that the proportion of those who can eat and drink freely is increasing.

Most of the foregoing discussion of wages and prices was published in 1901. Almost immediately thereafter some strange conditions began to show themselves in the United States and to increase until at this writing, in the spring of 1907, they seem to have passed their culmination.

The first of them was a run-up in prices of commodities, following the general inflation of industrial properties through trust promotions. This inflation collapsed in 1903, but contemporaneous with it there had been a twofold inflation of wages—one resulting from the inflation of prices, the other from the greatest trade-union activity ever known. The unions had discovered a new panacea

327 (a). *Pendulum swings backward in 1903.*

in the closely organized strike, and proceeded to apply it as vigorously as silver inflation or a protective tariff or any other panacea had ever been applied. Much of the advance of wages from this cause was of course purely nominal—it was obtained through the expensive idleness of the strikes, and followed by much more idleness or unemployment, because people would not or could not pay the scale of wages reached. But the country being at peace, there being no money-heresies in the air, the tornado impending from the tariff being as yet no bigger than a man's hand, the crops being good, and Europe wanting them; gold production being large; the quadrennial business disturbance of the presidential election being more nearly settled by a foregone conclusion than usual—all these influences made the period one of prosperity so great as to encourage the prosecution of the enterprises which had been held up by the high prices of labor. This was especially true of house-building, and the various forms of engineering construction. The accumulation of these undertakings has made an exceptional demand, for the time being, until at last most of the labor thrust into idleness by the new prices, has been set to work.

When this dammed-up rush of new enterprises passes, and San Francisco is rebuilt, probably there will be a counter-revolution in wages, as, in fact, there has already been in some trades where there has been no previously dammed-up rush of activity, and, more especially perhaps, where the employers have at last met organization with organization. But all these exceptional disturbances may in some particulars make the preceding figures for the rise of wages and fall of prices during the preceding half century, look insignificant for the moment. Yet in considering whether they can still be accepted as conclusive indications of the advance of the general welfare, the exceptional and probably temporary character of the remarkable fluctuations of the past five years (1901-1906) should be carefully borne in mind.

And yet in spite of them, the United States Labor

Bureau report for 1906 shows that the average wage-earner is working shorter hours than ever before, that he is receiving more pay for the short-hour week than he formerly received for the long-hour week, and that the increase in his average wage has been so great that its purchasing power has risen, notwithstanding the increase in prices of many commodities.

From 1894 to 1905 the average wage per hour increased 21.5 per cent., while the average hours worked per week decreased 3.9 per cent. The average wage-earner, working shorter hours, earns 12.9 per cent. more per week than in 1890.

The average price of food, weighted according to the average family consumption in the families of 2,567 workingmen, increased 9.8 per cent. above 1890. Notwithstanding this increase, the average wage hour would purchase in 1895 8.1 per cent. more food than in 1890. Still more important has been the increase in the number employed, amounting to 42 per cent. over 1894 and to 40.9 per cent. over 1890. The combined effect of the increase in the average wage and in the number employed, was to increase the total amount paid in wages per week by 65.7 per cent. above 1894 and 59.1 per cent. above 1890.

The total cost of living shows a larger increase in the purchasing power of an hour's wage than is shown by the price of food alone, for while there has been a general advance in commodity prices, the average cost of living has not advanced in proportion to the cost of foods.

Manufacturing establishments, especially the larger concerns, have been able to introduce economies that have to some degree offset the greater cost of labor and materials. One of the most important factors in moderating the advance in commodity prices generally has been the decline in the cost of transportation—a cost that enters into the selling price of practically every commodity. The average freight charge per ton per mile for 1905, as reported by the Interstate Commerce Commission, shows a decrease of 18.6 per

cent. as compared with 1890. The figures for 1906, when put in shape, will show a still further reduction.

This rapid decline in the average cost of transportation has been made possible by the expenditure of hundreds of millions of dollars for the betterment of tracks and road-beds, the elimination of grades and curves, and the purchase of more powerful engines and larger cars. This work will continue on an unprecedented scale for some years to come if it is not interfered with by radical legislation. But the threat of it is already making trouble. Yet the roads in trunk-line territory alone planned for the expenditure of not less than \$400,000,000 in 1906 and 1907, and all over the South existing lines are being improved and extended.

Dun's tables show that the cost of living per capita in 1860, before the civil war, was \$16.87 more than in 1905. For the sixteen years 1880 to 1895, inclusive, the average yearly cost was \$101.65. For the ten years 1896 to 1905, inclusive, the average was \$81.52, \$20.13 less than for the earlier period.

The preceding discussion has contained
327 (b). Recent reduction in hours. many statements of the decrease of hours of labor, accompanied by rise in wages.

It is inevitable, then, that the production per hour has increased. This is due to improved management, labor-saving machinery, and increase in the ability of the laborers. This latter has been both a cause and an effect: better wages and better conditions of living increase intelligence and working power. Of course a man working but one hour a day will produce very little, and a man working twenty-four hours a day will soon produce nothing. In what number of hours, day by day, will he produce most? Experience seems to indicate that in the general run of work, the happy medium is about eight. And strange to say, this seems to be the experience when the work is merely tending a machine: it will be so much better tended and kept in so much better order.

The question of the eight-hour day is an exceedingly

interesting one, and can be studied to good advantage in Mr. John Rae's book "Eight Hours for Work". There is no space for its detailed discussion here. Only Mr. Rae's general conclusions can be given. He supports them with a great array of facts.

Of course there is a great difference in trades. There are virtually none in which a reduction from the old working day of twelve or even fourteen hours, has not been attended with increased production; and of those trades where a farther reduction from ten hours to eight has been considered worth trying, the experiment has been successful in the vast majority of cases.

The vigor of the operatives, their prompt attendance, their care and attention in their work, their care of their machinery, their speed in little repairs and in shiftings, have not only generally kept up the output, but in a very large proportion of cases, have actually increased it.

The men have lost much less time from illness, and been put to much less expense for medicine, special diet and physicians' attendance. They have spent less for drink to overcome or solace their fatigue, and of course have suffered less from the consequences of drink. As a result, crime has fallen off.

They have spent their increased leisure better than they did their scant leisure. Gardening, gymnastics, outdoor sports in their season, and reading and attendance at schools and lectures in the indoor season, have increased enormously; and with them of course, book clubs, reading-rooms and lyceums. All this has increased intelligence, which has increased production. It is not to be confused with the misuse of *sudden comparative wealth*, which is spoken of elsewhere.

The old fallacy that "the profit is in the last hour" was suspected before the shortening of hours was tried, and when it was examined into, statistics proved that the last hour, so far from being the most profitable, was the hour in which occurred most of the expensive accidents to machinery, of the spoiling of material, and of the injuries to laborers, not to speak of most

of the expense of lighting, and a greater proportionate expense of heating in the colder hours of morning and evening.

Workmen have been increasingly willing to pay for shorter hours through a reduction of wages, but the rule has been that even where production fell off before things were adapted to the new conditions (which it by no means always did), as soon as the adaptations were effected, rising production increased wages until in time they have in many cases, probably in most, become higher than before the reduction of hours.

Foremen and the enterprisers themselves have abundantly testified that—perhaps most important of all—their own efficiency and the ease and effectiveness of handling their men, have benefited as much as the efficiency of the men.

One good result expected from the change has not been realized, but that very fact is a virtual demonstration that the change has not diminished production. It was expected by many that the hours taken from production would have to be restored by taking in a corresponding number of the unemployed. Many computations were published which proved to the satisfaction of those who made them, that unemployment of the willing would virtually cease. The expectation—unfortunately from one standpoint—has not been realized; but—fortunately for the proof that reducing hours has not reduced production—the proportion of the unemployed has remained about as before.

The skeptical reader is urged to study the facts on which all these generalizations rest. Mr. Rae speaks of a book on the subject by Mr. Sidney Webb and Mr. Horace Cox. I have not considered it necessary to consult it, as it is said, on the whole, to support Mr. Rae.

He also quotes an opinion of Mr. Jevons that the reduced hours are simply a result of the increased prosperity of the working classes—that they work less time because they can afford to. This factor must undoubtedly enter into the case, but one reason they can afford to work fewer hours is that they can do

as much or more in the fewer hours, and their increased prosperity enters but very indirectly into their better care of their machinery and their own persons, and the improved use they make of their leisure time.

I find a report worth mentioning, tho I am unable to give the authority, that among the cigarmakers 51 per cent. died of tuberculosis prior to the inauguration of the eight-hour work-day. Seventeen years after the eight-hour day took effect this percentage had been reduced to 23 per cent.

An instance much later than those given by Mr. Rae has just come from the Austrian coal and lignite mines. In 1902, the daily working hours there were reduced from twelve to nine. In 1904, the average production per man per shift was higher than in 1901, by 6.6 per cent. in the coal mines, and by 9.9 per cent. in the lignite mines.

328. Increase in wages and decrease in other prices come largely from Capital's share, It may well be asked if, until the recent brief and exceptional period in America, prices the world over not having risen, and still wages having risen, and the laborers having worked less time, where the increase has come from. Much of it has come out of Capital's share of product. The census reports of 1880 to 1890 show that during the decade, the amount of wages paid in the country increased 131 per cent., while capital increased but 121 per cent., and value of product but 69 per cent. In England Sir Robert Giffen computes that from 1843 to 1882 capital increased 110 per cent., and wages 145 per cent. Fifty years ago, yes, thirty years ago, capital in New York itself brought seven per cent., now it hardly brings four. In many of the Western states, it brought ten or fifteen, where now it brings six or seven. A similar reduction has taken place through the civilized world. This falling off of from a third to a half in capital's share, contributes largely to the increase in wages. True, the exceptional business activity in 1904-6 has increased the demand for capital, but this cannot be considered permanent: the very cause of it is increasing

capital at a rate that must lower interest as soon as, in the rhythmic course of things, the wave of activity passes.

329. and from La-
bor's Increased
Ability,

Ability benefits by reduction of the interest rate, and in it must be included the increased ability of the laborers. Their increased wages have come from increased productive power, in ingenuity, carefulness and steadiness. The enterprisers have been bidding for improved labor as fast as labor would improve itself; and the best enterprisers bid highest. Of course the less they must pay for the use of capital, the higher they can bid.

But of course a great deal of the improvement is due to the ability of the enterprisers and inventors. Processes are greatly improved, and so are transportation and organization. In 1890, transportation alone cost, per unit, in America but about a third of what it did even so lately as 1860, and, moreover, forests and mines and productive arable land have been opened much faster than population has increased. Regarding the share the enterpriser gets, Professor Mayo-Smith thus summed up the evidence of the statistics: "There is scarcely any doubt that it is falling. Production on a large scale, enormous investments of fixed capital, and increased competition, compel the entrepreneur to put up with a smaller reward." Since 1873 "the laborer has conserved or improved his position by the maintenance of, or even advance in, wages; the landowner has lost by falling rents; interest has fallen; and profits have been reduced to a narrower margin". Later he says: "This progress has been due primarily to the abundance of capital, which, on the whole, works for the benefit of the laboring classes in two directions—by competing for labor-force and thus raising wages, and by cheapening products and thus making wages go further."

The trade-unions have helped raise wages so far as they have increased the laborer's ability, and that

is very far. But so far as they have interfered with the Right to Work, and encouraged the various forms of scamping, of course they have diminished production, and, inevitably, retarded the advance of wages: for wages have got to come out of production.

Probably the men who get their living out of the unions, would insist that the unions had secured for Labor a large portion of product to which it was justly entitled, and which, before the unions, it did not get; and on the other hand, probably many men who have suffered from the unions' mistakes, would say the unions had wasted more than they had secured. Both extremes would be wrong. The unions have unquestionably done something, tho the decrease of interest on capital, and the increase of ability in inventors, enterprisers and the laborers themselves, has plainly done so very much that it is absurd to claim that the unions have done the lion's share. Moreover, when we see that the establishments that make most money usually pay the highest wages, it becomes plain that the competition of enterprisers for the best labor, must, independently of the unions' influence, have brought wages nearly, if not quite, as high as the enterprisers can afford to pay.

Certainly the evidence we have been going over, proves that there is some better way to diffuse the good things of this life, than to reduce their production by communism, socialism or scamping.

We saw the bad effects of scamped work on the laborers themselves (228 a-c),
330. and from Diffusion of Honesty. tho they seldom suspect it. The disappearance of scamped work alone would make an enormous difference in what the wages would buy. Moreover, the mistakes of the unions cannot forever overcome the economic laws which entitle an honest workman to better wages than a dishonest one, just as an honest merchant gets better credit than a dishonest one. People are occasionally much impressed when a dishonest man succeeds, and think dishonesty apt to succeed; but when an honest man succeeds, it

is so much a matter of course that people do not notice it. There is much reasoning of that kind: people are often so much impressed by what is unusual, and so little impressed by what is usual, that they constantly overrate the frequency of the unusual, and underrate the frequency of the usual—the very fact that a thing is rare, makes them believe that it is frequent, and *vice versa*. In spite, then, of an occasional rich rascal, there seems reasonable ground for belief that most men who get rich, get rich honestly: the criminal classes are certainly not the rich ones.

330 (a). which makes everybody's money go farther, The cheapness of goods is very much affected by the cheapness of getting them to the consumer, and that is affected by the honesty of all dealers who handle them, as well as of everybody engaged in transportation—cartmen, railroad people and steamboat people. And strange as it may at first appear, the cheapness of goods is affected by the honesty of people who never see them at all. The rates at which the farmers and miners and manufacturers can produce, and the railroads carry, and the merchants exchange, are all affected by the cheapness with which their banking business can be done, and the stocks of the companies dealt in; and that cheapness is of course affected by the honesty of the bankers and stock-brokers and their employees. In the great business of Wall Street, in many classes of transactions easy to recollect, the brokers rely on each other's mere word for millions, and so the great expense of time and money for written contracts is saved. In banks, as a matter of fact, the signatures of checks are not examined very much: to examine them closely, the expense for officials would have to be doubled. Obviously, then, a bank or a stock exchange could not have been run as cheaply as it is now, in the days of thieving Sparta, or even in those of Shylock; in fact, in less honest times, modern industries simply could not have been run at all: with less honesty, the enormous complexity and rapidity of modern exchange was simply impossible. Even outside the producing, exchanging

and banking world, the cheapness of goods is affected by everybody's honesty: the producers, exchangers and bankers have got to depend on engineers and architects, lawyers and doctors, and if those men must be paid for dishonest work in addition to real work, the expense of it must find its way back to the commodities and services that everybody uses. In fact, the whole working world is so bound together that where any part of it goes wrong, all the rest has got to share the expense.

There is still another portion of the community whose honesty affects the price of everything that everybody uses. The honesty of the government is important to us 330 (b), especially everywhere. Every taxpayer must not ^{honesty in Government,} only pay his own direct share of all official thievery and carelessness, but even those who do not realize that they are taxpayers, must pay in rent, and in what are called indirect taxes, which are levied on many goods in the hands of manufacturers, importers and wholesalers and added to the price when they reach the retailer.

331. and from creating and supplying new wants, Next to increased honesty, the most noticeable agency in diffusing wealth is increased variety of production. Telephones, bicycles, automobiles, electric lighting and electric railways, and the hosts of other new things mean constant new demand for labor, resulting higher wages, and at the same time, new facilities of exchange or production, with resulting variety and cheapness of product. Fortunately, man is a creature—the only one we know—of constantly increasing wants. Those who have money to pay out are always more ready to pay it for labor on new things, than for superfluous or wasted labor on old ones: so there is no need of industrial suicide by scamping.

This labor for the new things of course comes out of more wearing and disagreeable pursuits (327, end of note from Mallock).* But as there would be no such pursuits

* According to the United States census, from 1880 to 1890, those in the laborious pursuits of agriculture and the laborious and dangerous ones of mining and fisheries, had decreased from

unless the demand for them were very strong, they must have been kept going when labor has left them: that has been possible by labor-saving machinery. Of course, as labor leaves the disagreeable pursuits for more attractive ones, the deserted pursuits call doubly for labor-saving machinery, and are doubly ready to reward the inventor. Farming, for instance, tho healthful, is lonely and laborious. Within a generation or two, inventors have given the farm machinery that has released a large part of the farm-hand labor and sent it into the towns. The labor thus released has done more than merely find employment without slowing up the earlier kinds of labor. It has made so many new things that it has kept the other mechanics on the jump to make enough old ones to exchange for them. That is to say, the desire for new things—telephones, bicycles, automobiles, mechanical piano-players, talking-machines, has made people work all the harder to buy them.

But machinery often releases labor, and still increases supply. The world easily gets fitted to the increase of supply, because competition to sell the increased supply lowers prices so much that people soon use more goods of the same kind, or save enough money because of their lowered price, to use more goods of other kinds.

But, it may be asked: How does all this "make work" and do away with reason for scamping? Is it not as broad as it is long—new things call for labor, labor-saving machinery releases it, and the amount of employment is just the same as before? The answer is that in most cases, labor-saving machinery cheapens goods so that several people can buy, where one could before; and this increases demand for the old goods, so that makers of them soon want back some of their old laborers whom

46 per cent. of the whole number of persons laboring, to 39.6 per cent. In domestic and personal service, there had been a decrease from 20.1 to 19.2 per cent. While in the more desirable pursuits, professional service had increased from 3.5 per cent. to 4.2; in trade and transportation, from 10.7 to 14.6; and in manufacturing and mechanical industries, from 19.6 to 22.4.

machinery discharged, and often more laborers still.

*331 (b). which,
tho' of some harm
at the outset,* Yet while the introduction of labor-saving machinery has always been a blessing to workmen so far as they were consumers, in the early days of "the great industry" introduced by steam, it threw so many out of employment that they had very little to consume. Steam-power did not directly lead to the change. More directly it was due to inventions like Arkwright's loom, Whitney's cotton-gin, and Stephenson's locomotive. But they could come only after other men of great ability had provided the steam-power. But however the great industry came, it suddenly produced so many more goods with so much less labor, that great numbers of people were thrown out of employment until the world got fitted to the new state of affairs. Not only was time needed for invention to supply new occupations, but there was scant communication and travel to get laborers new places: so the distress was very great. Many people thought that inventions were a curse; and workmen, and even sentimental philanthropists, often destroyed machinery.

The effect of these circumstances was that for a time the poor were getting poorer from lack of employment, and the rich richer from the profits of the machines. This started the cry of "the poor poorer, and the rich richer" which became one of the stock expressions of Marx, Lassalle and their school, and is echoed, despite all new facts, to this day.

The old facts were even so bad that Marx promulgated an alleged "bronze" (generally quoted as "iron") law, that wages will always be the lowest on which wage-earners can subsist—a law often quoted by agitators to-day, and approved by audiences with money in the savings-banks.

*331 (c). Is but sel-
dom of any now.* But in the modern world, increased communication and travel enable labor to circulate freely in search of new employment when machinery disturbs old employment, and

workmen are not now opposed to machinery as generally or as bitterly as they once were. Many of them more or less clearly realize three things, especially the first—that a cheapening of most things increases demand so much that often as many producers are needed with machines as without them; second, that even if that does not turn out to be the case, the discharged people are apt to get work in making some new product or cheapening some old one; and third (tho it is realized more faintly than the rest) that the laborers themselves enjoy the cheapening of product, just as the rest of the community does.

So much for what the general progress of the world, outside of the man himself, can do for him. But even now, things do not always adjust themselves promptly enough to save the poor man the choice between getting nothing at all, and getting half what he produces. His only protection against being forced to take what he can get, is not to be poor; and he can help being poor

332. A man secures wealth himself by putting away *something* whenever he can spare it. Then he or his union can say to anybody who wants to hire: "If you won't give what we really produce, we won't work at all, and you won't have any chance to make profits." Yet a man

332 (a). by fore-handedness against hard times, would better take a little less in bad times, than go unemployed, especially as, in one sense, he cannot produce as much in bad times as in good. Of course a cloth-mill can run out just as many yards of cloth in bad times as in good, but it will not have the chance to run out as many, because most things will not sell for as much, and some will not sell at all.

332 (b). In which prices of necessities tend to keep up, while those of luxuries fall. At first it looks as if it should make no difference to a man if his own product falls in price when other things fall too, and that if he only gets one dollar where he used to get two, but can buy twice as much with that dollar, he is just as well off. But when prices fall in bad times, they do not all fall together. When people have

to economize, they cut off the things they can easiest do without: so prices of those things fall; but the prices of things a man *must* have, keep up pretty well, and for them he must pay two dollars where he paid two before, even if he gets but one dollar for the sort of things he produces himself. Now those things that a man can do without, are a larger portion of what is produced, than generally realized. Civilization consists almost entirely in things (and thoughts) that a man *can* do without. The savage has all that a man *must* have. Even take tobacco and whiskey—not that they are civilization, but they are things that people *can* do without, and yet they cost the country more than bread and meat put together. So, plainly, there must be other things that people give up easier than tobacco and alcohol. For instance, people can generally be comfortable for a time without new clothes or new furniture, or repairing and painting, or giving parties.

When business is slow, as it is in luxuries in hard times, people compete for customers by lowering prices, and when times are good, people want so many more things, that the supply is apt to be a little short, and they compete for them by bidding higher prices.

And now we come to the great and terrible question: What can he who has not the ability to produce much, do for himself?

332 (c). By cultivating Ability. The first step toward a reasonable answer is to realize that the question is partly one between him and the God who made him as he is; and it is also partly a question between him and himself: for unless a man is an idiot, he can do something to cultivate ability. Ability consists largely in knowledge, foresight, self-control and energy—a man can educate himself, think ahead, fight laziness, and control all desires that tempt him to seek a small present enjoyment at the expense of a greater future one. All this covers taking care of his health: for if he educates himself in the most necessary knowledge—that of his own body, and does not sacrifice the future to the tempta-

tions of the present, and is not lazy, he does take care of his health. There is not much danger from over-work; but there is much danger from overworry under the name of overwork.

333. Poverty sel-dom blameless. As a matter of fact, it is next to impossible to find a man suffering from poverty, if he is educated, forehanded, self-denying and energetic. It is only in cases of very exceptional misfortune, that distressful poverty is not a man's own fault.

But people want something more than to be merely above distressful poverty. And there is hope of a man born poor, cultivating so much ability that he can make himself very comfortable indeed. Most of the

334. Most rich men born poor. rich men were born poor.* Of course it is hard to tell how much of their ability was

born in them, and how much cultivated, but it is certain that more of their spare time went into studying their work instead of playing, and that more of their early sixpences went into the savings-bank instead of the beer-pot than was the case with most of the men who did not rise. This is by no means counse

335. Happiness not dependent on wealth. lling that nobody should have any recreation while he is young and poor. But the best recreations do not cost much money; books, music,

swims, and walks in the parks and fields and under the stars, are within everybody's reach, if they only would cultivate a taste for them. One should consider not his youth alone, but his whole life—how he will have the best time by and large. In youth, the

* Mr. Walker (101 and 227, notes) found that in '78 there were one hundred and seventy-six men conducting ten leading kinds of manufacture in Worcester, and only fifteen of them were the sons of manufacturers, and all but the fifteen began as journeymen. (Condensed from Wells.)

The author once got a city audience of workmen to announce what proportion of their employers began as journeymen. Nearly all did. Tho such facts are too generally known to require proof, they are not taken into account by those who argue "rich richer, and poor poorer".

wiser men have invested work and study and savings which have brought them compound interest later; while those who have indulged themselves unduly while young, had no rewards to reap later, unless sickness and poverty are rewards.

336. Wise philanthropy necessary to civilization. Nothing can answer the purpose of a more general diffusion of ability and honesty, not even a more general diffusion of human charity: because Nature's law is that a man, to accomplish anything, must take care of himself. But charity can help if it takes the right directions, while it must hinder if it takes the wrong ones. The wrong ones are indiscriminate giving to those who would consume without producing, as the Communists and Socialists propose. The right ones are giving in directions that tend to develop ability. The plainest of those is educating the ignorant, and relieving the sick and hungry, especially such as are apt to try to produce for themselves when they are well enough.

The sick and hungry who are *not* able to produce for themselves—the constitutional paupers, it seems settled that somebody else should take care of when their relatives cannot. It is often asked: Why should worthless people be taken care of at all? Would it not be better to let them die and get rid of them? That is Nature's way, and is it not better to follow Nature? That might seem the common sense of it, but when Nature evolved human intelligence and human sympathies, she started a way with the unfortunates and incapables different from her old way of letting them starve; and, somehow, all the nations, like India and China, that do let their worthless people die, do not succeed in being worth very much themselves; while nations like Italy and Spain that go to the opposite extreme, and give freely to beggars who could make a living if they would, do not come out so very much better. With them it is not so much a question of helping the unfortunate and incapable, as of encouraging the lazy. Such countries, of course, are full of beggars, and do not get on as well as the countries

where everybody has to produce what he lives on if he is able to.

336 (a). It should continue on present lines. After finding objections against all the revolutionary social changes that have been proposed to help the poor, there seems

nothing to do but what we are doing now, only doing it as much better as we can: civilization has been working at the problem some thousands of years, and must have learned something. Apparently all we can do for the lowest type of man is to wash him, doctor him, massage him, feed him, exercise him, make as much of a man of him as we can, educate him without devoting as much time to the most artificial spelling in the world as to some decent handicraft, and then turn him loose, if he is fit to turn loose, to be farther strengthened by the discipline of the world.

As to the higher type of unemployed, the deserving and capable, there are seldom nearly as many of them as sympathetic people generally suppose. Most of the unemployed do not want to be employed. The "great problem of the unemployed" is generally only one form of the great problem of the useless and incapable, and with the improved adjustments of industry, it is becoming more and more so every day, or would be if strikes were restricted to reasonable cases. Yet there constantly are deserving men whom the shifts and accidents of trade are throwing out of employment. The effort should be to tide them over, of course, but (more effective still, tho, like all reform, slow) to educate them so that they will more often anticipate the shifts and accidents of trade. But not everything can be done by education. There are often highly educated doctors, lawyers, engineers, architects with nothing to do, yet education *does* help men: the educated generally have more fore-thought than men less fortunately brought up, and so are apt to have something laid up for a rainy day. For all classes of those who have nothing laid up—who if they ever had anything, have exhausted it, the Charity Organization Societies and Labor Bureaus are doing

excellent work—better than any government ever did or is apt to do.

We cannot remedy at once all the defects that the wisdom of the whole world has vainly attacked for a good many thousand years. But we cannot afford to throw over all it has succeeded in doing, in favor of imaginative untried schemes, especially if they do not hold together any better than those we have already examined.

Of course the ideal is a philanthropy
336 (b). *It should help only those that cannot work.* entirely spontaneous, but there is one condition where government should take one man's property and give it to another: spontaneous philanthropy may not always be within reach, tho it is generally where a little sense can find it; but government is always at hand, and may properly support a man who really cannot support himself and has no relatives who can support him.

While caring for the unemployed is very apt to mean caring for the deliberately idle, caring for the unemployable is already recognized as among the functions of the civilized state. And this care of the unfortunate should not be restricted to those barely able to keep themselves alive, but should be extended, as far as it can be without doing more harm than good, to those unable to keep themselves decently alive. Human nature has not yet been universally, or perhaps generally, evolved beyond the point where the strong will take advantage of the weak; and it seems as legitimate for the law to protect the weak from robbery under the form of bargains, as from robbery under other forms. Of course the difficulty of doing so without lessening freedom of contract and a saving sense of personal responsibility, is very great, but the law's cautious experiments toward it should be steadily continued, and more caution still should be used against the acceptance of quack panaceas.

Under our civilization, government protects without charge against violence and theft, and also assigns counsel to an alleged criminal if he is unable to pay for it; but to obtain disputed rights, a man must pay for counsel

and court costs himself. Hence, as far as the law is evolved, it has been not unjustly called a luxury of the rich, and even the rich often refrain from resorting to it on account of the expense. To relieve the special disadvantages of the poor in this respect, there have been formed in several cities, Legal Aid Societies, which for some years have been of great service in securing the protection of the law for persons otherwise too poor or too ignorant to avail themselves of it.

There is a limit on what government can safely take for such purposes: it should not take enough to prevent lazy people trying to protect themselves, or to discourage able people from producing.

^{337. Province of the Law.} We have paid much attention to the hopeless absurdity of some pet schemes for helping the poor man by law. Yet

law is far from useless to help the less fortunate masses of mankind. All good laws help everybody, and until the recent appeal to law by the strong against the combined aggressions of the weak, the evolution of law has been toward the protection of the weak against the strong. But there is a great difference between laws to prevent oppression, and laws to give a man more than he can produce, at the expense of somebody else. Such laws, so far as they can be made to work, would simply oppress the somebody else. True, where a man is living in luxury and idleness and selfishness, a little oppression for the benefit of less fortunate people

^{337 (a). Cannot discriminate between people.} might be good for him, if it were possible for the law to begin oppressing him, without going farther and oppressing the wrong people.

^{338. Benevolence does not prevent accumulation wealth.} Not only does there seem to be something in history to show that a reasonable compassion for suffering, even if the suffering comes from a man's own weakness and fault, helps people who feel it, to get ahead; but other facts besides the progress of the benevolent nations, look as if the habit of being benevolent tends to enlarge Ability. Many of

the richest men are benevolent, and get rich and stay rich, in spite of all they give away.

At first it looks as if it might be safe to take away from a man all that he might have over a reasonably good living, but it would stop the usefulness of such men as Vanderbilt and Stewart just at the time when they are giving employment to most people, and doing the most to make everybody's money go farther. Even if a man

339. Speculation. is getting rich by the sort of speculation which is about the same as robbery, it would be impossible for the laws to select the kind of speculation any better than the laws against fraud can select it. Yet there is good reason to hope that the laws can gradually be improved.

But there is much more honest speculation than fraudulent speculation, and it saves the community a great deal of money by anticipating changes and preparing for them. It is like springs on a wagon.

If speculation is by deceit and monopoly, of course all ill-gotten gains should be restored, but it is not so plain that they should be confiscated to public use if the robbed person cannot be identified; and successful new laws to make it easier to prove gains ill-gotten than the present laws do, can be only, as the present laws are, the product of slow growth.

It is often asked: If a man is not active either in production or speculation, but is merely living on a fortune which may have been justly earned, but in fact was not earned by its possessor *at all*—for which he never gave the community any return, why not relieve him of that excess which does him no good, and put it where it will do some?

The law could not go into such fine questions as the amount of good it does him, or he does with it. But even suppose the question "lumped": if a man spends a great superfluity even in the best of the selfish ways—in fine decorations and other works of art, rare books, and all that, why not let the community take that money and spend it for the same things, so that many

men would enjoy them, instead of one man and his friends?

340. Law cannot regulate wealth wisely.

For one reason, the community would probably spend it very badly. Tammany taste, and even Congressional taste, are not good, and even that of the Army of the Tennessee regarding statues has been questioned.

340 (a). Must not paralyze Ability.

There is, however, a better reason, already partly given. Such fortunes, even if

wisely devoted to the public good, would not begin to benefit the public as much as do many of the efforts of enterprisers which would not have been called forth if the enterprisers could not leave their fortunes to whom they please. Enterprisers would be apt to stop in mid-career, if going on involved accustoming their children to habits of living which they could not hope to keep up. When a great enterpriser is at the height of his powers, his ambitions for himself are apt to be satisfied. His usefulness is kept up to increase the share of his production which he can leave to those he loves.

When we were discussing the general principles of rights and duties, we concluded that there is a certain balance in things. And it would seem to require that

341. Duties of wealth.

while the world is at work, every man should do his share: and as a man who

has great powers or great opportunities, gets much more from the world than mere government convenience and police protection,—much more in the way of honor and ease than his money pays for, he consequently owes the community something more than merely his share of the ordinary taxes.

But while we admit that the great enterpriser does his share of the world's work when, in addition to paying his taxes and being reasonable in his charities, he finds work for his less able fellow men, and conducts his enterprises honestly and liberally; the rich man who is *not* an enterpriser certainly has his duties too, especially in a country suffering, like ours, from having in political office too few men who are so rich that they

"can afford to be honest". A few such men are too modest (wisely so, in some instances) to take office, but most of them prefer to amuse themselves, all of them hate to associate with the low type of politician we sometimes elect, and—perhaps the strongest reason of all—our people are not fond of electing rich men of leisure, unless they started in the ranks; and even then, in too many cases, unless the candidates are ready to pay for it. They should not pay for it, because there is enough bribery of bosses and of voters already. True, to be useful in politics, a man need not necessarily take office: he can study politics and public men so as to know good from bad, he can support the good and oppose the bad, and help educate the people to do the same.

341 (b). In charity and education or even in sport. But there are other ways than politics in which a man of leisure can reciprocate what the community is doing for him—there are all sorts of charitable and educational and artistic institutions, and necessities for new institutions, that need his time even more than they need his money.

342. America's rich men peculiarly oblivious of public duty. If the best he can do, is to amuse others while he amuses himself—in horse-races, yacht-races and similar amusements, he cannot be regarded as useless, even if he does not avoid the palpable danger of such sports. But compared with other countries, America does not get her share of service in politics, charity, education, public improvements, the arts, and even amusement, from her men of leisure: in older countries, such duties are matters of course in the education of the more fortunate classes. But here, as we are all free and equal and govern ourselves, our need of a class to attend honestly and energetically to politics, is much greater than the need in the older countries: we govern ourselves very badly. Tho the Old World sometimes sends us a Carl Schurz, a Godkin or a Franz Sigel, we are still the dumping-ground for its refuse population; and we have no class of hereditary politicians and men of public spirit, and no long and

wealthy past sending us a rich inheritance of charitable, educational and artistic institutions. The American man of leisure who satisfies himself by merely giving money, neglects his other duties, and devotes himself to mere selfish sports and luxury, is just as much more blamable than the European one, as our civilization is younger and less developed than the European one.

A man, rich or poor, anywhere, who does
343. *Useless
rich man a
"dependent".* not do his fair share of the world's work, is simply one of "the dependent classes"—he depends on others while giving no adequate return. His money may be in one sense an adequate return, but unless he made it himself, he is merely dependent on the man who made it, whether that man be alive or dead. Dependence does very well for women and children, but it is disgraceful in a man.

No American has surpassed in wisdom or benevolence, the one who summed up this whole subject of the distribution of wealth in the following winged words:

"Wealth brings with it its own checks and balances. The basis of political economy is non-interference. The only safe rule is found in the self-adjusting meter of demand and supply. Do not legislate. Meddle, and you snap the sinews with your sumptuary laws. Give no bounties; make equal laws; secure life and property, and you need not give alms. Open the doors of opportunity to talent and virtue, and they will do themselves justice, and property will not be in bad hands. In a free and just commonwealth, property rushes from the idle and imbecile to the industrious, brave and persevering."—*Emerson.*

BOOK II.

THE PROMOTION OF CONVENIENCE.

CHAPTER XXIV.

PRELIMINARY SURVEY.

So much for government's protection of rights. We saw that its other general function is the promotion of the people's convenience. Yet while we have been discussing the state's relation to rights, it has come in our way to touch upon some conveniences—when we were treating of natural monopolies, we mentioned roads, bridges and ferries, railroads through country and city, water and gas supplies, sewer connections, and the development of extraordinary mines, springs and scenery.

As we know, some of these things are objects of attention by all civilized governments. So are many other conveniences—chief among them, money, education, postal service—which in Europe often includes the carrying of telegrams and packages—surveys and maps of the country, harbors well dredged, protected and docked; lighthouses, coast life-saving stations, parks, museums, libraries, almshouses, asylums and hospitals. The things enumerated in this paragraph are provided by *all* civilized governments. *Some* governments also provide superintendence of public health, electricity, gas, public baths and lavatories, pawnshops,

concerts, lectures, houses for the self-supporting poor, and cemeteries.

These things are not generally gratuitous, however, even in the sense that taxes pay for them: persons using money, railroads, mails, harbors, water, light, cars, ferries, houses, and cemeteries for their dead, generally pay for them directly.

A century ago, hardly any government took care of any of the things named, except money, roads, light-houses, harbors, and, in a very limited way, mails and parks. Even then the parks were hardly public parks: they were rarely more than the pleasure-grounds of rulers and rich people, occasionally thrown open to the public. The great parks which everybody can enjoy at all times were almost unknown.

Regarding some of these conveniences, great difference of opinion prevails as to whether government should supply them, or leave people to do it for themselves. As to those that *all* civilized governments supply, we may as well consider debate closed, at least, as regards the wisdom of government supplying them. But even of them, there are some on which there is great debate regarding what kind and how much, especially regarding money, treatment of the defective classes, roads in their new forms of railroads and street railways, and sundry minor matters.

CHAPTER XXV.

MONEY.

General Considerations.

We can begin with a topic that has, at least, one easy side. Of all the items enumerated, probably the earliest supplied by government, and the one where government agency is most taken for granted, is money. The use of our spending any time now on money questions may be doubted, as it may be claimed that the Act of March, 1900, (not to speak of the elections in November of that year and in 1904,) disposed of them all, as far as this country is concerned.

^{344. Reasons for} But Mr. Bryan's followers did not seem to ~~studying money.~~ think so, nor does the Honorable Tom Watson. Money questions will never stay disposed of, as long as the vast majority of mankind are of low producing power and low intelligence. So long, men will try to better their condition by tricks with money, land-tenure, government control of production, frequent strikes—all of the old schemes to get something out of nothing, but with hosts of new faces.

Moreover, another reason why the Act of 1900 did not finally settle all the questions, is because it did not touch them all, as we shall see.

For three reasons, it is very important for the citizen to understand the government's relation to money. First, because meddling with money questions by the ignorant has caused this country and most countries some terrible disasters—this country, perhaps, worst

of all, because here the ignorant have most to say. Second, because money questions come more directly home, literally to each man's pocket, than any other questions which government affects. Third, because, for that very reason, people are apt to suppose they know all about money questions, and are therefore less apt to leave them, than questions of the post-office, the coast-survey and lighthouse board, and the administration of war and justice, to be settled by people who really know.

Even the administration of justice is hardly a more important government function than issuing money. True, justice is more important in a general sense than money: but nothing works more against justice than ignorant tampering with money. Money touches every man, while not one man in fifty ever gets into court; and when he does, he soon finds that he does not know anything about law. But nearly every man has a little money, and so seems to think he knows all about that; and apparently, if he has none at all, he is still more apt to think he knows all about it.

**345. Barter and
Money.**

Now, to begin with the simplest aspect of the subject, if there were no money in the world, and a farmer wanted a hat, and his wife a frock, and his child a pair of shoes, he would trade off for them at the store a load of potatoes or any available thing he might have. The usual name for such dealings is barter. It is customary only before people become civilized enough to have money. Yet the farmer might go around long before finding a shoemaker who wanted just potatoes enough to pay for a pair of shoes, and a hatter who would take just potatoes enough to pay for a hat, and a dry-goods man who wanted just potatoes enough to pay for a frock. Moreover, as the city storekeepers do not generally bother with such dealings, the farmer might spend a week, perhaps, without finding one who would. They would all laugh at him for asking them to.

Still, of course all this trouble would be necessary

only if we had no money. Now as we have money, the farmer naturally takes his potatoes where they buy potatoes, and then takes his money where they sell shoes or hats or frocks. So the mere fact that we have money, would save him as much trouble as, probably, his potatoes cost. On considering this in regard to all sorts of dealings, one gets some idea of the very great usefulness of money.

**346. Swindling by
money.** Suppose, tho, that our farmer got paid in poor money? then he could not do anything. But as any man giving another poor money deceives him and robs him, what is to be thought of a man who tries to make all the money in the country poor? Plainly that he would attempt the greatest fraud that can well be conceived of, and do a frightful deal of harm. And yet at the height of what we Americans fondly believe to be the highest civilization yet attained, many well-meaning men have attempted that gigantic fraud, from ignorance; and many others from dishonesty.

**347. Kinds of
Money.** In the United States we use many kinds of money—paper, gold, silver, nickel and copper. The Chinese, Spartans and a good many other nations have had iron money. The American Indians used wampum for money; and they also, as well as our New England ancestors, used discs of shell. The fur-traders near our northern borders, and many other people, have used skins. Tobacco too has been used, and so have wheat and corn; and in Africa, cattle and even slaves have been used as money, and called live money, as distinct from other kinds, called dead money.

We give all these things the same name—money. Now all things that can have a name in common, must have at least one quality in common, but they need not look alike, any more than all things we call food look alike. The very different things we call food, can all be eaten, and will all help keep the body alive.

348. Qualities of
all money.

So all the things that have been called money, have the quality in common that wherever one of them is used as money, people will give nearly all other things for it.

But some people will give nearly all other things for a check on a bank, or a promissory note. Yet they are not money, because people *generally* will give other things for money, while for checks and notes, other things will not be given by people *generally*, but only by people who know all about the checks and notes, and have confidence in them.

Another difference is that if a check or a note turns out at any time not to be good, the person who last received it usually has a right to demand that the person who paid it shall make it good: that is one reason for wanting to know if the person signing is solvent. But if money is what it appears to be when it is paid, the debt is discharged once for all. If, for instance, a bank breaks, or a government is overthrown, those who have any of its money cannot require the people from whom they received it, to make it good to them. Of course counterfeit money is not included in this condition: counterfeit money is not money at all—not even bad money, any more than a portrait is a person. But real money may turn out bad: government notes are real money, but they would be worth no more than paper if the government did not pay them. So a silver dollar of the present weight is real money, but it would be worth but fifty cents if the government would not give a gold dollar for it. So bad money can be legal tender, and a man be legally obliged to take it: the treasury notes now in circulation are not good money, because they are not expressly payable in gold, yet they are legal tender; and bad money was made legal tender all through the civil war, and for years after it, until in 1879 government made the money good by being ready to give gold for it.

When a creditor accepts a legal tender

349. Bad money
as Legal Tender.

(210-210 b) the debtor is legally free from farther liability, even if the money should turn out bad, unless it is counterfeit.

Now we are ready to pack our characterizations of money into a portable definition:

350. Definition *Money is anything for which substantially all the people in a community will part with anything they are willing to dispose of, and which discharges forever the debt for which it is received.*

Broadly considered, money is simply power conveniently arranged in units. A hundred dollars is a hundred units of power controlling most of the things that men generally care for. After men have enough money to satisfy all material and æsthetic wants, they crave more because they want more power. The great bankers often control the policies of nations. But it should not be forgotten that the great philosophers control them more often, and for centuries after the bankers are dead.

351. Bad money buys less than good. Usually the most noticeable difference between good and bad money is that for anything they have to sell, people want more bad money than good money. For instance, when our New England ancestors began using discs of shell for money, at first people would take a few of them as pay for ordinary purchases; but soon, so many discs were made that nobody would sell a thing for any amount of them. The same way during our great civil war: people North wanted at one time nearly three green-back dollars for a thing that they would take one gold dollar for, and people at the South wanted a hundred Confederate paper dollars for anything they would sell for one gold one, and at last they would not sell things for the paper dollars at any price. But people sell the same thing now for a United States paper dollar that they will sell for a gold one.

352. Value in paper money. These great differences in the value of paper dollars have arisen because the value of paper dollars depends upon the chance of getting gold ones for them. A note of a government or of a bank has no magic about it, any more than the note of an individual, even tho the government

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But a paper dollar will not be taken at full value in a country where it was not issued, because nobody can use it there for anything but old paper, and it must be sent home for redemption. If you were in London with a pocketful of greenbacks and nothing else, you could not buy anything until you had hunted up a dealer in foreign money, and sold him your greenbacks at enough discount to pay him to send them here and get the gold back. Even if you had American gold instead of greenbacks, the shopkeepers would not generally take that, but you could find ten people who would, to one who would take greenbacks. Only a few special dealers would buy the greenbacks; almost any banker or large shopkeeper would take the gold, tho at a discount, but a very trifling one compared with that on the greenbacks. Within a block, somebody would be ready to put the gold into the melting-pot and use it for making jewelry or gilding or something of that kind; or the English mint would take it and coin it into their money. But nobody could do anything with the greenback except send it to America and wait for the gold, and pay expenses both ways. Therefore, paper money never could be quite as good as gold money for foreign trade.

CHAPTER XXVI.

MONEY (CONTINUED).

Some American Experience.

355. How paper
money cheated
creditors. .

As already said, during the civil war, greenbacks became worth only forty cents on a dollar, and a result was that if, when the war broke out, a man owed a dollar payable in two or three years, he could then make his creditor take forty cents for it. That was just what hosts of people did, and what hosts of people, during the Bryan campaigns, wanted to do; and still want to do, by getting a chance to pay irredeemable silver dollars where they have borrowed gold ones. During the war, the transaction was somewhat disguised by the pieces of paper being marked as worth dollars, and people began taking them before they began to depreciate. Moreover, it was not the fashion to speak of them as going down in value, but of gold as going up; and what was more important, people endured it all cheerfully, so as to enable the government to use the bad money to carry on the war. The government made bad money, partly because most of our rulers at that time had had little occasion to study finance, and knew no better. Government needed money at once to pay the expenses of the army. So, rather than incur the delay and expense of borrowing, they thought it the simplest thing to issue promises to pay, which were our present greenbacks or their ancestors.

As this money was legal tender, and people had to

take it, a little explanation may be needed to show how it could get bad. People did not need to sell things for it unless they got their own prices. Therefore, as government kept on making more of it, and people began to lose confidence in it, they put up prices, including the price of gold, so that a man who wanted a gold dollar to pay a debt in Europe, soon had to pay for it over two dollars and sixty cents in greenbacks.

357. Effect of money not payable in gold. In the years '93 and '94 depreciated silver made a difference to the American people of a seventh of all their property

—three times as much as the civil war cost—about ten thousand million dollars—nearly a hundred and fifty dollars to each man, woman and child in the United States. True, many men, women and children never had a hundred and fifty dollars, but a good many of them might have had it in wages, in those years, who did not get it because our money was not good enough for all foreign purposes. But of course reference was made only to the *average* loss—some men lost millions, many men lost thousands, nearly every laborer in the land lost heavily in wages, but perhaps a few people lost nothing, and some even gained—a few largely.

Notwithstanding that for more than twenty years before '93, you could get a gold dollar for a paper one or a silver one, our money was not, during those twenty years, what it should be abroad or even at home, as the events of '93 abundantly demonstrated. Wise people were afraid that in a short time they could not get a gold dollar for a paper one or a silver one, and ran business at very low pressure in consequence. The fear existed because very few of our paper dollars were actually made by law payable in gold: most of them were payable either in silver or in "coin", which is either gold or silver; and there got to be so many of these dollars out, that people began to fear that if any mishap like a war or a panic should reduce

the government's revenue, it would not have gold enough to be able to pay such paper dollars in anything but silver. Moreover, none of the silver dollars were made by actual law payable in gold, and perhaps we might not have been able to get gold enough to pay them if they were.

Our silver dollar is only token money (353). It really contains only fifty cents' worth of silver, and if our paper money were redeemed only in it, and it were not redeemed in gold, our silver dollars might easily go the way the greenbacks went during the civil war. We are really saddled with two kinds of doubtful money.

358. Why the silver dollar has depreciated. There is only fifty cents' worth of silver in the silver dollar because when the amount was settled upon, silver was worth much more than now—the amount put in the dollar was worth about a gold dollar then. But since then, especially from '79 to '93, the production of silver has been greater than that of gold, and the price has come down with a run. Not only has the increased amount lowered the price of silver, but there has also been a great decrease in the uses for it. For some time previous to the publication of this edition, it has been rising, but not enough to materially alter the conditions herein stated.

When there is a great deal of anything, or people have little use for it, it is cheap—what people cannot use, they will sell low.

The great decrease in the uses for silver was mainly due to a large part of the world abandoning its legal-tender quality for large sums. Soon after the uniting of the German states into an empire in 1871, the empire wanted to make a new uniform money system to take the place of the old differing systems of the various kingdoms, and it concluded to make people pay their large debts only in gold. So a vast amount of old silver coin was thrown out of use, and put upon the market merely as silver. The effect was the same as if a corresponding weight of silver table service had been thrown on the market: silver became so cheap that

soon Belgium, Holland and France stopped the yearly increase of their silver money, which they had been making for a long time. That left still more silver in the general market. They did that to keep out of the very scrape that we ran ourselves into by not doing it —by having so much depreciated silver coin on hand in 1893 that the danger of not being able to redeem it in gold brought on the terrible financial panic.

In 1873, some of our own wisest statesmen, anticipating the wisdom of France, got a law passed discontinuing the use of silver for payments above five dollars. But that did not throw much old coin on the market, because we were not using much. But our example added force to the examples of France and Germany. In June, '93, India, the greatest silver-coinage country in the world, stopped coining silver, the price went lower than ever before, and that helped precipitate our panic.

359. Why coins
were not made
heavier. When the price of silver came down so, our government did not put more of it in

the dollar, so as to keep it worth a gold dollar. It is always hard for government to do a new thing, because so many people have to get together and agree, and in this case people interested in silver-mining opposed using twice as much silver for a dollar, altho it would have increased the demand for their metal. For one reason, they thought it better to work for the repeal of the law passed in 1873, which had diminished the use of silver as money, and so had diminished the demand for their product. Therefore they wanted silver again made legal tender for all debts, large and small; and in spite of all we have seen, they succeeded in recovering again for their light-weight dollar, the legal-tender power that had been taken away in '73. In '78, they got a law passed making the light-weight

360. American Re-
monetization in
'78 and '90. dollars legal tender, and requiring the government to coin from \$2,000,000 to

\$4,000,000 worth of silver bullion a month.

The smaller sum alone was coined, resulting in an average of about \$2,500,000 in money. Government received these dollars for taxes, but was not under obligation to

redeem any not needed for taxes. In 1890 the coinage was made to depend, after July 1st, '91, solely on the government's need of money, but the treasury was obliged to buy four million five hundred thousand ounces of silver a month, whether it coined the silver or not, and to issue "treasury notes" in exchange for it. These too are receivable for all public dues, and are legal tender, but they are redeemable only in silver dollars, which are also legal tender. Making coin worth but fifty cents, legal tender for a dollar, would be swindling creditors just as badly as they were swindled by the forty-cent greenback during the civil war, if the coin was worth only fifty cents; but it is token money (353) for a dollar, and as long as redeemable, is of course worth a dollar. But, as already said, it may not always be redeemed. Whatever silver had to be coined, was not put into dollars heavy enough to be each worth a dollar, partly because people generally did not know the dangers of light coinage; and some who did, would gladly have risked them, and have exposed the whole country to them, for the sake of selling their silver. So they professed to attribute the panic to thousands of other things; they even hired pamphleteers, speakers and newspaper writers to befog the people and make them clamor for "cheap money for the poor man"—a light-weight legal-tender dollar rather than one of full value.

They could get enough people to vote
361. The rapacious fooling the ignorant. for such a thing because majorities are naturally ignorant on new questions, and in this case they were fooled by the argument that cheap money is good for the poor man, because he can get more of it for a given amount of labor. Many people were led honestly to believe this an advantage; but also many owing debts hoped to pay them in light-weight dollars, which, if the government would not redeem them, could be had for fifty cents' worth of work or product. They did not see that if one man gets the cheap money easier, other men get it easier too; in other words, the man has to pay it out easier—just as much easier as he gets it. So he gains nothing.

On the other hand, all creditors lose; and for everybody, it works like such schemes as scamped labor (228 b) or mistaken taxation (464). All those who produce goods at first hand, like farmers and miners, get money easier only for their own work, but they have to pay it out easier for all work which they buy, with its added cost in reaching them through many hands. As an illustration, suppose that, under cheap money, a copper-miner wants to buy a copper kettle. True, he gets an inflated price for the amount of copper in it, but he has to pay back the same inflated price for that amount of copper, and, in addition, to pay inflated prices for carrying the copper to the smelting-furnace, rolling-mill, kettle-factory, wholesale dealer, retail dealer, and at last to the user himself. Moreover, he has to pay inflated prices for every mechanic and exchanger who touches it on the way. Inflated currency not only always inflates laborers' wages, but inflates the half-dozen profits on everything on its way from the farmer or miner or lumberman, through the manufacturer up to the retailer, so that when the laborer takes his inflated wages to buy his supplies, he finds the supplies inflated vastly more than his wages are. Hence the people who agitate most for rag money and light money, are the very ones who would suffer most from it: a laborer gets an inflated price for his own one process, and has to pay inflated prices for a dozen. The case is something like that of scamped labor (228 b).

If cheap money makes all these people pay more than they get, it is not easy to determine precisely who makes the excess—whose is the profit.

*362. Who profits
by light-weight
silver?* In the case of silver, apparently some of it would have to go to inflated wages for silver-miners, because owners of mines would bid for more of them; and certainly much of it goes to their employers and the money-changers—just the very people that a dishonest voter would think he was going to cheat by paying his debts in cheap money. The employer who pays out a thou-

sand dollars a day, would seem likely to benefit more by cheap money than the man who pays out only two or three.

The debtors who can cheat most with cheap money, are not, after all, generally the poor and ignorant. That is another place where the latter fool themselves or are fooled.

*363. The poor are
not the debtor
class.*

The people in debt are of course those who have the property, intelligence and character needed to get credit. But that class has not furnished most of the votes for cheap silver: most of the votes for cheap money and for all other attempts to make something out of nothing, come from the ignorant and irresponsible people who are always in poverty, and always ready to listen to any deceptive promise of a short cut out of it, like socialism or communism or magical taxation or trade-union coercion or cheap money.

Another argument that got votes for making light-weight silver dollars legal tender, was that silver is naturally the money of the poor because it is cheap, and gold the money of the rich. There is no truth in

*364. nor the class
that handles least
gold.*

this, nor would it be of any consequence if it were true. It is simply an appeal to blind prejudice. As a matter of fact, while poor people have to buy for cash, people rich enough to have bank accounts usually buy on monthly or quarterly account, and usually pay those accounts and all considerable debts with checks, and their small ones in silver change; it is quite probable that they do not use as much gold as people a shade worse off.

*365. The panic
of '93.*

Now that we have considered the making of silver, legal tender again, and coining more of it, and the dangers of doing so, let us see how all that brought about the panic of '93.

The silver which the government was forced to buy (360), was paid for either in notes from the treasury, which were promises to pay "coin", and which the government might redeem in silver; or in certificates

that the treasury had received and would pay back silver dollars. These were also paid for any silver that people might be tired of carrying around. These notes and certificates were not good money, but for the time they served the purpose, because even if the government paid silver dollars for them, it was ready to pay the silver dollars in gold. The trouble was that there got to be so many of the treasury notes and silver certificates, that people grew afraid that the government would not long be able to pay gold for the silver dollars which the paper represented.

365 (a). Begins with alarm in Europe. The first noticeable effect was that people in Europe who owned our bonds and stocks, got frightened lest soon they

might not be able to get gold for them, and began to send them here for sale. Those "people in Europe" had invested money here with our corporations, to build railroads and open mines and do many other things, or had lent us money to carry on the War for the Union. When they got frightened lest they should be paid in silver, and sent the stocks and bonds back again to be sold, a large part of the money paid to the brokers for the bonds was treasury notes and silver certificates. These would not be taken in Europe: so importers went to the treasury for gold. People here soon began to join in the fear of the foreign bond-holders that government could not continue to pay gold, and, remembering the war experience with the greenbacks, began to expect that the silver dollar and most of the government paper money would fall in value, so that a man with a dollar due him could really get but fifty cents.

365 (b). Business suffers. This made business dull, loans difficult and money scarce. A large share of business is done on borrowed money and credit sales, and people were afraid to lend a dollar or give credit for one, when there was a large chance of getting only fifty cents back. This led to the stopping of many works, shutting of many mills, and dullness among the dealers. All this threw many people out of employ-

ment. True, the bankers and merchants could have lent gold and sold goods under an agreement to get back gold, but people will not bother with such details in

365 (c). Kansas tries a new way of "bleeding". ordinary transactions, and moreover, the state of Kansas once declared such agreements illegal, and other states might do

the same: so people did not like the risk. Moreover, when business is bad, people who really want to pay back just what they get, may not be able to.

365 (d). Hoarding begins. Not only was business dull, but money was scarce. Many people getting money in hand, did not put it in business or in the banks, where it could be lent out, but locked it up. They were afraid that the banks might be able to get back only light-weight silver dollars where they had lent gold ones, and would break; and people also feared that if they did not put the money in banks, but bought property, if business got disturbed by poor money, the property might shrink in value so that they could not get the money out again.

365 (e). The banks and the poor. It is by no means exclusively the

money of the rich that goes if the banks fail. A large part of all the money in banks, is in the savings-banks, and that is almost entirely the money of the poor (141).

Popular fear for the safety of banks and investments grows with what it feeds upon, until it becomes a regular panic, when people are so afraid of a fall in prices, that they begin to throw away their stocks and bonds for anything they will bring. In the panic of '93, people threw away their stocks and bonds at great

365 (f). Cleveland stops the panic. sacrifices. The President called a special session of Congress, and, after great trouble, got enacted a law repealing the requirement passed under the previous administration, that the treasury should buy four million five hundred thousand ounces of silver a month.

The absurdity of the repealed law has been strikingly illustrated in the fact that notwithstanding the increase in population and business—the latter especially after

1903, the supply of silver that the government had accumulated before it stopped buying in 1893, obviated the necessity of buying any more for the mints until August, 1906.

Tho that silver was lying idle in the treasury, in a sense it was not idle: for, being paid for in notes of the treasury, it was a guarantee for these notes (378). But its fluctuating price made it a very unsteady guarantee, and each month's purchases of silver increased the notes and, consequently, the danger that they could be redeemed only in the silver. Such uncertain banking showed our government to be controlled either by lunatics or by men who would stop at nothing to sell their silver, and this did as much to hurt our credit, and lead the Europeans to sell our securities, as did the mere fear that the treasury could not pay gold for all its notes.

Stopping the silver purchases stopped the panic. In spite of the blows business had been stunned by, within three months people, from their hoards, increased the money in the national banks ten per cent., not to speak of what went into savings-banks, state banks and private banks; but even after President Cleveland stopped the panic, business did not revive for a year or more, until he had been obliged to buy gold at heavy rates to pay government notes with, and pay for the gold in government bonds, and had satisfied people that he would do so whenever necessary. Then factories started up, wages increased, wheat and cotton advanced in price, and everything looked hopeful.

Yet it was frightfully expensive for
 365 (g). but at President Cleveland to redeem the token-
heavy cost. money with gold bought by government
 bonds. But he did it because the notes were out,
 366. Government and Congress was not wise or honest
Banking. enough to pay them off and burn them up. Consequently when anybody wanted gold for foreign shipment or the arts, instead of going to a dealer for it, and paying a little commission, he went to the government and got it without commission—that is to say:

at the expense of all the people. In other words, it was at the expense of the people that the greenbacks were kept in circulation, in order that government might do, without charge, the business of the very "goldbug" that the ignorant voter so hates.

The law does not directly oblige the government to do all this brokerage business. But it was not avoided, because it was much less expensive to do it than it would have been to repeat the panic of '93. We have had to pay for letting people who had silver for sale, fool ignorant voters into the belief that if they would only use half the value of silver that they did of gold, in a dollar, they could have twice as many dollars, and all of them just as good.

The hopefulness occasioned by Mr. 367. "16 to 1." Cleveland's policy, continued until the silver men again began to agitate for the presidential election of '96, and to demand unlimited coinage of a legal-tender dollar, whose weight should bear, to that of a gold dollar, the ratio of "16 to 1". This they made their campaign motto. The ratio of actual value was about 32 to 1. Fear of the success of this scheme made things dull again. Its defeat restored confidence, and the country entered upon the greatest period of prosperity it has ever known—one that even the Spanish and Philippine wars could interrupt but for a moment. But even the defeat of the silverites in '96 did not restore confidence immediately, because the treasury gold for redeeming silver dollars remained for some time scant; and the laws were so indefinite that the government might be thrown upon a silver basis by any great financial disturbance, such as those Mr. Cleveland had issued bonds against. People felt afraid to invest dollars worth gold, in enterprises that might pay them only dollars worth silver. So business continued dull until 1898. Then the enormous mechanical genius of our people had been gradually enabling us to send Europe many manufactured articles cheaper than they could be made there. Altho our

high tariff makes prices here higher than in Europe, many of our manufacturers are selling to Europe at low prices, because they must compete there. Yet they sell here at high ones, because the tariff shuts out European competition, and puts the difference collected out of our people, into the manufacturers' pockets. All this is despite the elaborate theory worked out when we were treating of distribution—that competition and weak producers keep prices down, and it well illustrates one beauty of "Protection": to the extent of the duty, and at the expense of the rest of the people, the government "protects" the manufacturer from the necessity of competition, and the danger of incompetency; but at the same time it "protects" (?) the public from the *advantages* of competition (146–148 d) and makes us more open to the dangers of incompetency.

368. Improved
trade balance
supplies gold.

But to return to our light-silver-dollar experience. Business confidence began to appear again in 1898. Despite the dangerous state of the law, two causes sent us enormous quantities of gold: our manufacturers had begun to sell increasing quantities in Europe, and we had enormous crops in '97 and '98 which a scarcity in Europe compelled people there to pay us high prices for. These agencies filled our treasury so that it seemed safe against any accident in sight.

But suppose our crops were to fail for a couple of seasons, and Europe were to have good ones, or find good ones in Asia, Africa or Australia; and suppose, too, that Germany, with her splendid technical education, were to drive our manufacturers out of Europe, our gold-

369. But that
cannot be depended
upon.

supply would probably run down to the point where Mr. Cleveland had to sell bonds to increase it, and we might be rushed again

to the brink of national bankruptcy—or over the brink. But we have now a defence against that, in the Act of March 19, 1900, which declares it to be the country's policy to pay gold, and provides by legislation the means for doing it which Mr. Cleveland took the responsibility of providing himself. Yet tho that act declares

it the policy of the country to keep all its money on a par with gold, it does not prescribe any method for doing so, or put the responsibility for doing so on anybody's shoulders; it leaves room to pay in silver, current expenses of the government averaging over \$1,500,000 a day, and \$700,000,000 bonds, principal and interest, and fastens no responsibility to redeem that silver on anybody. A secretary of the treasury could do it if he wished, or he could find abundant pretexts for not doing it. A President could order him to do it or not to do it. What is of more importance: any declaration of Congress can easily be set aside by a future Congress, if elected by the people to do so. Despite the Act of March, 1900, the Democratic nominations later in the year threatened as much as those of 1896. They distinctly interrupted business, but the enormous revival after their defeat, shows that at least the people able to conduct business, at last understand the matter.

The election of 1900 confirmed the favorable outlook, and in that of 1904, money questions were no longer a distinct issue. But they are apt to crop up again, especially when the hard experience we have recounted gradually drops out of memory. The silver craze was not the first time that people have attempted to get rich in some such way, nor will it be the last. The ignorant

are all the while trying some such deceptive scheme for getting rich by magic.
370. Light-weight silver money no new scheme. Soon after the war, when it was proposed

to pay off the greenbacks, and even when the confidence that they would be paid had brought them back to even value, from a value of forty gold dollars for a hundred greenback ones, there were still people who objected to having the greenbacks paid, and wanted enough more issued to fill every man's pockets. There was no explanation of how these people expected to get the greenbacks into every man's pockets, or of why they would not be as well off if they would set to work and get a corresponding amount of gold into their pockets. Work did not enter into their calculations. They had a thousand schemes, all

of which disguised some plan for really making the government *give* greenbacks to all who wanted them; and of course they did not realize that doing so would make the greenbacks as worthless as the Colonial and Confederate money.

CHAPTER XXVII.

MONEY (CONTINUED).

Needs for the Future.

Despots have sometimes made themselves rich by debasing the currency and making the people take it at full value; but not often, if ever before, have a people thought, like many of ours, that they could get rich by debasing their *own* currency. Of course the best safeguard against all such schemes among the people, is not to have ignorant voters. But probably

371. The best not many men in America—white men at safeguard. least—will ever be deprived of their votes.

So our only way of having no ignorant voters is to educate them so there will be no ignorant. What most needs to be taught about money, is that there is no way to make a dollar good for a hundred cents' worth of anything else, but by putting a hundred cents' worth of something into the dollar itself, or by being ready at a moment's notice to give a hundred cents' worth of something for it. These methods are not equally convenient: for it is much easier to handle considerable amounts in paper than in coin, or to handle a silver dollar holding only fifty cents' worth of silver, than to handle one twice as heavy.

Nor are the two methods equally safe. Silver probably deceives more. Perfect safety lies in having the full value in the dollar itself: then no misfortune or foolishness or rascality can depreciate it. After all, there

372. The safest money. is no *absolutely* safe material for money, because new discoveries may reduce the value of gold itself; but gold is the safest there is, and safe enough for ordinary practice. But, as already suggested, that would make handling large sums so inconvenient, that the world is agreed to sacrifice ideal safety for real convenience.

Balancing the convenience of paper money or light silver money, against its dangers, what is the best money depends on a good many things. Silver has some intrinsic value, which the paper has not, and it has vastly more durability; but on the other hand, the lack of durability in paper does not count for much, as it is easy to issue a new note for a spoiled one. But the very fact that silver has some intrinsic value, confuses ignorant people, and even tends to make them dishonest. Paper is really much more honest money than silver: nobody can take it for anything which it is not. The use of it in this country has brought great losses and disasters, but the country has learned a great deal from them. The people could not long have been fooled with paper as they have been fooled with silver. Paper has not brought any trouble in England in recent times; but there, ignorant people are much more under the influence of people of education than they are here, and England has no paper money under twenty-five dollars.

374. Safety in large bills. Probably if there had been no green-backs under twenty-five dollars, most of the people who made trouble about them after the war, would have known so little about them that there would have been no trouble. Even if the money-schemes for making everybody rich, are started for selfish reasons by able men, and even if such men are able for a time to fool a few other able men new to the subject, the schemes depend for their principal following upon the people who have too little judgment to see twenty-five dollars often. The only thing to make our paper silver certificates safe under all

375. Only safe silver certificates.

probable conditions, is to put a dollar's worth of silver into the silver dollar, and call in all those which contain less. Simply to take away its legal-tender character, would contract the currency and destroy confidence, so that many people could not get money enough to pay their debts, and much bankruptcy would follow. It would contract the currency by two temporary strictures: first, people would be slow to accept silver dollars or silver certificates: so they would go to the treasury for redemption. Next, as the treasury is not at all likely to have enough other money to redeem them, it would have to pay out bonds to meet part of them, and the currency it would take in place of bonds would make just that much less for business use, until it should be paid out again. It would destroy confidence, because, the treasury gold supply being gone to redeem the silver currency and certificates, the treasury would be in the condition of a man without money in his pockets or in bank. He might need it before he would have time to borrow it, and, if everybody knew his plight, would probably have to borrow at heavy expense, as Mr. Cleveland did.

To redeem the silver currency in new legal-tender greenbacks, would meet most of the difficulties, if government had gold on hand to pay the greenbacks as wanted. But there is a difficulty that it would not meet: the use of greenbacks keeps the government in the banking business, and as long as it is, the money system of the country is under the control of politics, and subject to the attacks of the politicians which have kept business disturbed for over forty years, since government went into that business during the civil war.

376. Objections to all government notes. Yet government can be got out of the banking business without diminishing the volume of money, and so contracting the currency. The notes of private banks, properly regulated, could replace the government notes, and there is no objection to the government continuing to coin money (if it coins only honest money) as the Con-

stitution requires: so it is only necessary to provide for that portion of the money which is not coin, or, at least, not honest coin. The government mints cannot supply all the money needed, for several reasons:

377. Yet coin in- in the first place, prices depend on the amount of money in circulation, and are now fixed on a basis of much more money than the coin; to get back to coin by retiring the other money, even gradually, would contract prices so that a corporation having to pay a million dollars' worth of bonds fifty years hence, would find a million dollars of its assets, at present values, fallen to probably a third of that price, while its debts would not have shrunk at all: that means inability to pay them.

But instead of getting down to the coin we have, why not let government coin more, as fast as it retires light silver and its other bad money? Because the demand for so much more gold would raise its price, so that the farmer and manufacturer and miner and laborers of all kinds would have to give more of their products to enable the government to get gold—taxes would rise. Another objection

*377 (a) and
inelastic,* resulting from, or at least closely connected with, the last, is that currency only in coin is very inelastic. It is impossible to buy much gold, especially suddenly, without raising the price (that is to say: making it exchange for more of other things); and conversely, it is of course impossible to throw much onto the market, in coin or in any other shape, without lowering the price (that is to say: making it exchange for less of other things): so it would be very hard to keep a coin currency just equal to the varying needs of business.

Moreover, an exclusively coin currency is extravagant. To have enough gold for active times, would mean to keep it idle in inactive times, and so lose interest *377 (b). and eats
up interest.* on it. Business requires an elastic currency: while Nature and men are taking their winter rest—no crops produced, little building and mining, little travel—there is little business, and little currency is needed. In the spring, as things

wake up, more is needed, and as fall approaches, and the farmer has to pay labor to gather his crops, and the dealer has to pay the farmer, and the railroads and merchants are busy with the crops, a great deal more money is kept in use. A mere coin currency cannot expand and contract to meet these conditions.

An exclusively coin currency, then, is open to many objections that can be met only by a paper currency. And yet the burden of our song has been that a paper currency is dangerous. But it is not dangerous if the people generally can be made to

378. Good paper currency preferable. realize that it is: because then it would be taken care of. A paper currency is

safe if its promise to pay is certain; and dangerous only if, as in the civil war, it cannot be redeemed in coin when required.

Beside the reasons already given for not letting the coin go into use at once, instead of keeping it to redeem the paper, is the very important one that experience has shown that it is safe, even in ordinary banking, to let out four dollars of paper for every dollar of coin in hand. If people know that the banker has a reasonable amount of coin and other value to meet the paper, not all of the paper would ever be presented for redemption at once. People are like the Dutchman who got frightened and went to the bank for his money. As soon as it was offered him, he told them to keep it: "Ven you got him, I no vant him: ven you don't got him, I vant him."

It is not meant to imply that it is safe for a bank worth a hundred thousand dollars to issue notes for four hundred thousand: nobody should have out obligations greater than assets, but rather considerably less, to leave a margin for accidents. But if a bank has out four hundred thousand of notes, and no other obligation, it can safely keep all of its property above one hundred thousand, in marketable bonds or good commercial paper or any other good "quick" (i.e., quickly sellable) security that will pay it interest. If it can lend four hundred thousand dollars, and get interest

on it, by keeping one hundred thousand dollars idle in its vaults, that one hundred thousand will really be earning fourfold interest; and that, with the interest on the three hundred thousand in securities, makes the bank get interest on seven hundred thousand while it has a capital of only four hundred thousand. Out of this, however, it must pay expenses, and unless it manages well, it may have no profit after all.

It may very naturally be asked: Why then should not all the people participate in this advantage, in the shape of lowered taxation, by keeping the government in the banking business of issuing notes? For the

379. But not from government. same reason that, as we saw (236 b, 236 c), government should not be put in the manufacturing business. It would leave

to politicians with pulls, the work that should be done by men fitted for it by nature, and put in place by natural selection; and it would take away from the community the enormous advantage of having its banking done by such men under the stimulus of competition and personal reward.

A word more regarding the elasticity of the paper currency. Of course the bank must lend this currency in order to get interest on it. When the country is very busy, people will borrow it all; when business is dull they will not need it, and will pay their maturing notes, and the bank will have to take its currency back. Then, of course, it fails to gain interest on it, and on its idle coin too; but the paper costs nothing.

380. Essentials of banknotes. "Wild-cat" money.

Notwithstanding all that has been said in favor of a non-government paper currency, the country has tried private banknotes, and found them wanting. But this was largely because they were issued on the authority of individual states, and especially of some of the newer states, where political organization was very primitive, and the regulations were primitive and primitively enforced. If anybody proposes to put paper in general circulation, it is essential that it should be done under conditions

to protect against general harm. Under the imperfect conditions alluded to, a great many notes were spread over the country without enough coin and other assets behind them to make them safe; and many of the notes from the poorer and more provincial banks were so poorly engraved and printed that it was easy to counterfeit them. As a result, nobody knew whether most of the money offered him was good or not. People were constantly getting "stuck" with bad notes, as they sometimes are with pewter coin. It became worth while to issue frequent pamphlets—"Banknote Guides", "Counterfeit Detectors", etc., etc., and every shopkeeper had to keep one, and before accepting money that he did not know well, turn to his pamphlet for description and advice.

One of the good things blown by the ill winds of the great civil war and its depreciated greenbacks, was the disappearance of the old "rag money": they blew it out of circulation. Everybody understood a greenback, it was the same thing the country over—well made (even if ugly) and hard to counterfeit. Tho it was worth at one time but forty cents on a dollar, people knew what it was worth without turning to a "Guide" or "Detector", and soon it drove the private rag money out of existence. That, by the way, was an apparent (but only apparent) contradiction of the famous "Gresham's law", that the worse money always drives out the better. But it cannot be gone into farther here. To summarize our conclusions regarding the country's needs. In the first place, there is always a need of plenty of money—more even, when business is brisk, than all the gold coin in the country. In the second place, it should be supplied under regulations from the United States Government, not the state governments, so that the money will be the same throughout the country.

381. Essentials of a sound system. The regulations should be: first, secure that nobody not of proved character and ability can start a bank of issue; second, that no more notes shall be issued than there are good

quick assets (377 b) on hand for redemption of, at least one fourth of which assets shall be gold coin; third, that these notes shall conform to some good definite standards of workmanship—perhaps that they shall be provided by government; only, as we have seen and shall see further, we need to be very cautious in what we trust government to provide; (The mere mechanical furnishing of these notes would not, of course, be "going into the banking business");) fourth, that a limit for ordinary issues shall be fixed, and all beyond that limit taxed so as to force their retirement when not really needed; fifth, that each bank shall have arrangements for redemption at several centres, so as to facilitate retirement; sixth, that government examiners shall visit the banks unannounced, at frequent intervals, to see that the regulations are complied with; seventh, that such penalties shall follow infringement of regulations as to make infringement extremely improbable.

There are those who favor a single central bank of issue, as is virtually the case in England; but that does not seem adapted to our large country, and there are other objections which cannot be gone into here. Humanity is not wise enough and careful enough yet to make us sure that any arrangements are going to work perfectly; but under those suggested, the law of demand and supply would probably keep the currency as nearly adjusted to requirements as anything is at the present stage of human progress. If there were not enough, the demand for more would make profits great enough to tempt more people into issuing it; and if there were too much, the portion uncalled for would be retired, and the capital behind it be turned into things in more demand.

382. Basis for an elastic currency. Under present arrangements the bank

cannot issue more, because when there is a demand for more, the only thing back of our present banknotes is United States bonds, which are admirable as far as they go, but they do not go far enough—there are not enough of them, and they pay very low interest; besides, if a bank wants

to enlarge its circulation now, it must go through an enormous amount of red tape, including buying a lot of government bonds, and sending to Washington for notes, and waiting till they are engraved. While all this is going on, a panic could wreak destruction. It would therefore be well to substitute for United States bonds, all securities in the country that an able commission (best, perhaps, appointed by the banks themselves) should pronounce safe for the purpose (they would not be a very large proportion of the whole), such commission to revise its list at frequent intervals, and banks to shift their securities accordingly.

Then to get the notes into circulation, it would only be necessary for any man who has the securities, to take them to bank and borrow banknotes on them up to within a reasonable limit of their face value; then when his need is over, he could take the notes back and get his securities.

Commercial paper of high quality would not be available to base the notes on, even tho there is more of it when business is brisk, and less when business is slow, because it would be very difficult to be sure that such paper, when offered, was for actual goods sold; and an elastic currency would lead to inflation of values unless it were carefully limited to a basis of actual property. So far as currency might be based on accommodation paper, it would, of course, be pure inflation, and might go on until it should collapse like an exploded balloon. But even if it were based on genuine commercial paper, the producer of raw material might get currency on the note given him by the manufacturer, the manufacturer might get it on his jobber's note, the jobber on the retailer's, and the retailer—a grocer, for instance, on the consumer's; so the same raw material might originate currency four times—on the notes received by the banks from the raw-material man, the manufacturer, the jobber and the retailer; value added by the manufacturer might originate currency three times—on his jobber's note, and the retailer's and the consumer's; the job-

ber's service, twice; and the retailer's, once—an aggregate of ten issues of currency where there would be a sound basis for only three actual values accumulated—the raw material, the manufacturer's, the jobber's. It seems therefore that a safe issue of currency based on commercial paper would be practically impossible.

The retailer's note could not represent a value to base currency on: because even if the goods in consumers' hands are not—like food, actually destroyed, their commercial value as a basis for currency, is gone as soon as they are in consumers' hands. Even if they endure, like furniture or jewelry, they at once become "second-hand".

383. The farmer's needs In the foregoing analysis, by the way, the farmer's demand that he shall have a chance too, as well as the "bloated bondholder"—that currency shall be issued based on his farm, not merely on coin, or even on bonds that can be sold at a moment's notice on the stock exchanges, is counter to the requirement that the currency shall be based on quick assets. His land, or even a mortgage on it, cannot be sold for full value at a moment's notice, if there should be a run on the bank to redeem its notes in gold.

This brings up the serious question of how to supply the demand for money in thinly-settled regions where there are no banks—where, according to stories we hear, a man sometimes rides around a whole day in a vain effort to get a fifty-dollar bill changed; and a

383 (a). Partly his own lookout. man on being asked if he could change a ten-dollar bill, answered: "I never had so much money in my life, but thank you for the compliment, all the same." In the first place, the reason for lack of money in such regions, is generally (not always) the same as for the lack of it anywhere else—the people have not the wealth to base it on, or the ability to make the wealth—in fifty-dollar bills which they cannot change, or in any other shape: the regions are generally poverty-stricken, and the

attempt to give them plenty of money by putting a bankful of it among them, would do no more good than to put a bankful among the New York tenements: the people cannot get the money unless they have something to exchange or pledge for it. Even if the farmers wanted to mortgage their farms to a new bank, often they could not do it, because the farms are often mortgaged already.

Still, there are places where people really have good farms and crops, but not enough money for ordinary needs. But it would be odd if such regions had the resources to establish banks, and the need for them, and still went without them. So their demand for banks still looks like one more form of the cry that assumes so many forms—for government to supply money to those who cannot supply themselves.

*383 (b). Remedy
for legitimate
needs.* Yet there are places to which it would be well for banks elsewhere to send branches. That is actually done in some

countries—in Scotland and Canada, for instance: a city bank will get a country storekeeper to start a little branch, supplying him with money and elaborate instructions based on experience; and such a branch is often a very good thing for everybody concerned.

Apparently the serious want is in places too small for even our new banks with \$25,000 capital. Little agencies seem to be still wanted. A few of them wisely distributed undoubtedly would silence all *reasonable* calls for "more money".

Two things can be done to facilitate that—enable banks, by law, to establish branches; and take off the taxation—from small ones at least. The general government does not get enough from bank taxation to make it worth bothering with anyhow. It is one of the pottering taxes that ought to be cleared out of the way. It yields only a half of one per cent. of the national income.

CHAPTER XXVIII.

PUBLIC WORKS.

Extra-Municipal.

So much for Money. Probably the next item of popular convenience evolved by government, and one over which government care is almost equally taken for granted, is roads of some sort; but as already intimated, the kind and degree of care that 384. Roads. government should take of the new forms of roads—railroads and city railways, is open to much debate.

Regarding the immense importance of roads, there is a very early and very authoritative piece of testimony. The Romans were the greatest 384 (a). *As spread-ing civilization.* road-builders and—a very suggestive fact in the connection—the greatest spreaders of civilization the world ever saw before our own race took hold. The proconsul who was probably the most famous advancer of Roman civilization in barbarous regions, when asked what was the first thing he provided a new country with, answered: "Roads"; "And the next thing?" "More roads"; "And then?" "Still more roads."

As the importance of roads bears on many civic questions, we will consider them more fully than some other topics which at first seem nearer the centre of civic relations. The Romans, in carrying out this principle, put roads through most of continental Europe west of Russia and south of Scandinavia, and

even into Great Britain—many of which are highways of civilization to this day. These were far from being private enterprises: they were primarily the work of military engineers to facilitate the movements of armies—good out of an ill wind.

As between private work and government work, the general evolution of road-making by our race, has been somewhat as follows: at first in England, and after the settlement here, and in some rural regions to this day, everybody has had to give some days every year to road-making, or furnish a substitute. This was by degrees commuted into money, just as military service was (56a), and road-makers were hired by the government, as soldiers were.

Passage was generally free over roads thus made; tho as cities grew up, both in the old home and here, government not only itself improved roads between them, but also chartered private corporations to do it; and on these roads, tolls were generally charged. As the Romans were the best road-makers among the great nations, it may be interesting to note that the worst are unquestionably "our noble selves". The reason was our expansion over great tracts of new country before good roads had time to grow up, and hence the habit of putting up with poor ones. Later, when we wanted better things, improvement has been much blocked by bad organization and corrupt local government.

Government road-making may be considered established. But American organization has been left too much to local control. Outside of unmistakable city and village streets (and possibly inside of them), it should be a state function; and it is far from certain that it should not be a national function. Every important road must extend through poor and thinly populated towns and counties, as well as rich ones. The poor ones are not able to keep their roads up to a good standard, nor is it fair that they should: for they really do not use them as

much as do the people of more populous adjoining towns. Moreover, the poor road-making thus forced on the poor towns is not confined to them alone, but tends to become the standard for their neighbors.

These difficulties are more effectual with us than with other civilized nations, because our ancestral spirit of local independence—our desires to govern our home affairs ourselves, our objection to submitting them to the more remote state and national governments, is so strong that many consider it the very basis of Anglo-Saxon liberty. Even in such a town as Concord, Massachusetts, quite possibly the most enlightened rural town in the world (and consequently one of the most wealthy) part of a magnificent boulevard intended to run from one end of the state to the other was bitterly opposed because: "This town has always been able to manage its own roads."

Yet while Anglo-Saxon local independence obstructs roads so much, England has splendid ones, because our English cousins are more thickly crowded; their roads are older than ours; and they are near such good examples in France and Switzerland. Relative wealth cannot affect the matter much as regards our older and richer states: for they are rich enough; but our national wastefulness and extravagance have a good deal to do with it. Few things are more wasteful and extravagant than poor roads: in any ordinary civilized region, they waste more, over and over again, in horse-flesh, wagon-wear, and time of man and beast, than good roads would cost.

Tolls are not generally charged now, tho there are some survivals. But in most cases governments have abandoned the tolls on their own roads, supporting them by taxation, and have also acquired the private toll-roads by eminent domain, and thrown the toll-gates open.

The experience in this regard with bridges has been
385. Bridges. about the same as with roads; yet the greatest and newest of the great bridges—

those between New York and Brooklyn, tho built by the city governments, still take toll. But there is prospect of its speedy abolition. Yet at first sight, it does not seem fair that the vast majority of the residents of the Greater New York, who do not use the bridges half a dozen times a year, and hundreds of thousands of them who do not use them at all, should pay as much as those who use them twice or oftener every day. But the argument carried out with stern logic, would put a toll-gatherer at every bridge in the country, and very few people want that done. As long as each man has a right to the free use of such a general and important public convenience when he wants it, as long as the cost for each person is a trifle, and the indirect benefit to every person, whether he uses it or not, is great, the question whether one man wants it more than another, is one of those trifles which the law does not bother itself with.*

**386. Regulation
Ownership. Opera-
tion.**

Roads and bridges in a sense operate themselves, but now it is time to take special note that as we come to facilities requiring *operation*, there are three relations which government can occupy toward public facilities—regulation, ownership and operation, and neither of the first two involves a later one. It is especially important to keep in mind the last two as distinct: much mischief is done by confusing them. There is a wide and intelligent sentiment in favor of government ownership of franchises, especially in cities, in order that their unearned increment, often very large, may go to the people instead of private monopolists. And there is even a more intelligent, and consequently, of course, less wide sentiment that under the universal suffrage pervading American and French cities alone, the *operation* of the franchises is a task too heavy for the political capacity. During the Hearst campaign which dis-

* *De minimis non curat lex.*

graced New York City in 1905, the cry of his supporters was "municipal ownership", while what they really meant was municipal operation; and the confusion of terms drew to their ranks and even their ticket, many of the foggy-minded sentimentalists who are too ready to sympathize with any cause containing a grain of wheat, tho its main constituents be chaff.

387. Ferries and docks.

We shall reach more definite applications of the principles just enumerated as we go on. Let us begin by noticing that ferries require infinitely more management than roads and bridges. Yet government has operated them several times in Great Britain, and occasionally in Germany, but very seldom in America. In 1904 London took over the Thames steamboats. By 1906 they showed a heavy loss. Of the government ferries, some are free and some are not. Boston charges for one, but runs it at a loss. Glasgow makes a big profit on hers. The one over the Thames at Woolwich is supposed to perform the service that bridges do higher up the stream, and like them is free. In 1905 New York took over the Staten Island ferry, but so far with very unsatisfactory results.

387(a). Municipal and Private contracts.

If reports the world over can be relied upon, there is nothing exceptional in the showing of government extravagance given by the following figures from the New York City statistician in 1906, and showing the monthly salary items of the ferries run by the municipality, in comparison with those for the ferry under private management at Thirty-ninth Street, Brooklyn, and the one run in New York Harbor by the Pennsylvania Railroad Company. It is claimed that the municipal ferryboats are so much larger as to require some officers that the Railroad Company's boats do not.. The city employs three crews a day; the Railroad Company, two. I am not, however, advocating that method of economy: for the indications are strong that it does not result economically.

	City.	30th St. Ferry.	Penna. R. R.
Captain.	\$137.50	\$135.00	\$130.00
Quartermaster.	100.00	None	55.00
Deckhand.	60.00	55.00	49.50
Porter.	55.00	40.00	49.50
Engineer.	125.00	120.00	120.00
Assistant engineer.	125.00	None	82.50
Oiler.	90.00	None	77.00
Water-tender.	100.00	None	66.00
Fireman.	90.00	65.00	66.00
Attendant.	50.00	None	None
Mate.	75.00	None	None
Ashman.	76.00	52.50	49.50

The franchises (159 c) of American ferries have not generally been given away. Even in New York, where the exceptionally valuable street-railway franchises were once given away freely, the ferry franchises have usually been sold for terms of years to the highest bidders. Docks in Liverpool, Glasgow, Hamburg and many other European cities, have been splendidly and profitably provided and cared for by the local governments. In the United States they are generally inferior, tho they are rapidly improving. We shall see some general reasons for this inferiority later; but at best, docks are used by so small a portion of the people that they are not under as general criticism as most municipal conveniences (389 f, 392 c), and their management is therefore peculiarly liable to be stupid and corrupt.*

388. Railroads.

Now to come to the modern modification of roads—the railroads.† Regarding them, it is not fair to compare the United States as a whole with any other great nation exclusive of its colonies, because most of the United States is very thinly settled. If we consider only the parts of our own country

* Treating ferries and docks as extra-municipal may need defence, but so would treating them as municipal.

† In treating this subject, I have been under great obligations to Professor Daniels' "Elements of Public Finance", and to Professor Seager's Economics, tho not as great as, perhaps, the concurrence of our views would indicate. .

388 (a). Superior service in America and England.

as thickly settled as other civilized countries, the five greatest nations in the order of the frequency, speed and comfort of their railroad trains, unquestionably would be: the United States, England, France, Germany, Italy. The order with reference to degree of private ownership would be very nearly the same: in England and the United States, the ownership and management are virtually entirely private. In France the government owns part of the roads, and leases them to private companies, who run them; in Germany, where the government attends in a paternal way to more things than government does in any other great nation, it both owns and runs nearly all the railroads; and so also in Italy until the government leased its roads to private companies—partly because it recognized the roads as sources of political corruption.

But the Italian leases, after twenty years,
388 (b). *Italy.* fell in in 1905. A bill came before Parliament to have government resume the running of the roads. It was backed by the employees, who believed, from the traditions of the previous government control, that they would have an easier time under it than under private companies. This belief was probably correct, but it virtually asserts the greater efficiency of private management. In support of the bill, there was of course fermented a popular idea that the private managers were making too much money, and giving too little for what they got. Such an idea of any existing institution, of course always pervades the party of discontent.

The matter was settled by government undertaking the operation. If it were not for the apparent impossibility, alluded to more than once in this volume, of getting unbiased testimony on such a subject, the result of this action on the part of the government would be plain in the following letter to the London *Times*:

"ROME, Oct. 23 [1906].—The government ownership of railways in Italy continues a menace to the life and limbs of those compelled to travel in this country. Another serious accident occurred yesterday, a passenger train running into a goods

train near Turin. Sixteen passengers were hurt. The engine driver, station agent, and pointsman are in hiding.

"It would seem that the discipline of railway servants leaves something to be desired, and this no doubt is a factor in the general disorganization, of which complaint is made in all parts of the country.

"Apart from all question of danger in railway traveling, Italy is made so wretchedly uncomfortable that visitors may well pause to consider whether the pleasure of being in Italy is worth the misery of being in Italian trains."

388 (c). Germany. But the German experience is really the only one great enough to justify comparison with ours. If we compare only the portion of the United States whose population is something like as dense as Germany's, in that portion we surpass Germany, partly because of the great inventiveness of the American people, partly because of their greater tendency to move about, and their having more money to do it with, but mainly because of the fact that American railway officials are in the business to make all they can out of it, and are stimulated by fierce competition between themselves and between their roads. Yet the American roads are falling off in efficiency because of trade-unionism among the men, and the interference of banking interests in the management. Still, the Germans are behind us because their railway officials are government employees at salaries not apt to be changed, and with all the routine indifference that everywhere characterizes the government employee with nothing to lose and nothing to gain. The fares, tho about the same in money as ours, are twice as high, *compared with other things*, as they are in the thickly settled portions of America, and the trains do not run half as often.

At the Railway Congress in Washington in 1905 the German Ambassador said: "We do not recommend that you follow our example in the national ownership of railways." He probably meant the national *operation*: the ownership is a much more hopeful proposition. The government operation in Germany has failed in the particulars (among others) which our people, the

President at the head, are clamoring for government to remedy here—in securing dissimilar rates under dissimilar circumstances—between long and short hauls, between competing and non-competing points, between land and water competition, and between small customers and large customers.

An important point of comparison is the proportion of trunk lines opening up a variety of villages between central points, on the continent of Europe, as compared with England and America. In the countries of government roads, there is usually but one trunk-line between important points. In England and America, there are usually several, each opening up its own line of towns and villages, and all forcing each other, through competition, to the utmost economy and efficiency.

Regarding comparison in charges for service between government roads and private roads in the same state, statistics are scarce and somewhat unreliable, because of the confusion between passengers of different classes, and because it is next to impossible to tell what a government road really costs the people: fares may be eked out by taxation.

American experience in government management amounts to very little.

388 (d). Government operation in America. The city of Cincinnati owns the Cincinnati Southern Railway, but leases it to a private company.

The state of Missouri has had a little experience with railroads. Governor Folk is reported to have delivered himself substantially as follows on the day in 1906 after Mr. Bryan, at his home-coming reception in Madison Square Garden, had announced himself in favor of government operation of the railroads:

"Mr. Bryan's proposition for the taking over of railway lines by the national and state governments would be met with no acceptance in his [Gov. Folk's] state, where the experiment had been tried and found wanting.

"Missouri had pledged her credit in subsidizing the lines. Practical paralysis of traffic during the civil war forced defaults of interest payments on the bonds. Under the terms of the charters, whenever such default was made the state was empowered

to sell the lines to the highest bidder, or to become itself the proprietor under the liens it held as guarantor. In this way all of the lines became the property of the state, with the exception of the Hannibal & St. Joseph, now a part of the Wabash system.

"The state's mode of operation was for the governor to appoint a general superintendent or manager. Such appointments were of course political. One of the first was that of J. T. K. Hayward of Hannibal as general superintendent of what was then called the Platte County Railroad. This was very near the close of the war, when the ravages of armies had ceased, commerce was reviving, and confidence returning. Traffic along these lines was increasing rapidly.

"Yet every month showed a deficit in the finances of every line except the Hannibal & St. Joseph. Loaded down with political appointees lacking both railroad experience and natural efficiency, the [government] road was such a continuing burden to the state that, by a legislative act of March 17, 1868, a private corporation which was willing to take it off the hands of the state and extend it far enough to reach the Iowa and Kansas lines was relieved of all financial liability under the original charter, the state assuming the entire bonded debt with the interest then accumulated.

"State Senator Woerner, a Democratic member of the joint committee appointed to investigate charges of collusion in the sales, said, in a special report, that the state would be making a good bargain to donate the lines to any responsible parties who could extend them and operate them without cost to the taxpayers.

"While the lines were the property of the state they were not, of course, assessed for taxation. Immediately after the sales assessments began, and extensions, improvements and betterments of all sorts have increased these assessments steadily. This year the ten trunk lines traversing Missouri, eight of which are outgrowths of the lines sold by the State in the sixties, are assessed for \$34,000,000.

"It is impossible to see how Missouri could ever have staggered from under the debt of \$31,735,840, without this source of taxation."

388 (e). American
construction less
thorough,

Despite the frequency, speed and comfort of the trains on American railroads where population is dense, they do not surpass the European roads as roads: they are not, on the whole, as carefully built, or as safe to the passengers or to the people among whom they pass. That, too, is probably influenced by the relations between the roads and government. Governments are more in

the way of looking out for the rights of the people in general than private corporations are, and are less apt to consult economy; moreover, if a man gets killed in Europe, a government loses a possible soldier, and it cannot spare soldiers: for all these reasons, a European government would be more apt than the American to put a bridge where a railroad crosses a driving-road, and to go through a town above the streets or under them. This has actually been vastly more the practice abroad than here. Our murderous grade-crossings are almost unknown in Europe, and where they occur, there is more precaution and delay by closing gates than our people would stand. In England the construction of the roads, especially in the way of elevated tracks going through cities, and possibly at grade-crossings, is perhaps not as thorough as in Germany; in other respects the care for the public safety compares favorably. Government ownership, however, is not necessary to secure that. Good government can secure it, whether it owns the roads or not; it does secure it in England; and government is, on the whole, improving in doing it here.

388 (f). and incidentally less careful of safety.

The great difficulty regarding rates of fare and freight in America is the same, probably, as with privately operated roads everywhere: through rates between great cities served by several lines of roads, or by a water line as well as a railroad line, have naturally been lowered by competition, sometimes below the paying point. The roads have to make up for it by higher rates for the intermediate non-competitive points. Of course they are as apt—even more apt, to get these local rates above reason, than to get the through rates below reason. Hence discontent that sometimes overlooks the difficulties of the roads, and hence grangerism and the call for government control (154 a) or even government operation.

The roads have been led into the golden-goose-killing operations of destroying the profitable part of their business by driving population from non-competitive

points to competing ones. Mr. Stickney* says that between 1870 and 1890, in Illinois, Wisconsin, Iowa and Minnesota, the former class decreased in population, and the latter increased.

Besides discrimination between points, there has been a more arbitrary discrimination between goods, and through this means, as well as directly, between persons.

And yet despite all complaints, just and unjust, the U. S. Bureau of Labor reports a large decrease in the cost of transportation while the complaints have been loudest.

388 (h). *Consolidation and competition.*

Of course all the complaints are used as arguments by the advocates of government roads. As to government operation affecting competition, the argument is the same as the argument for trusts (152): the enormous waste of competitive advertising between competing roads, and the frequent duplication of management—several able men doing work which, if the roads were under one management, could be done by one able man; with clerks in the place of the others—the other able men being released to increase and cheapen other production or develop new conveniences (331). But all this is not necessarily an argument for government ownership, but only for consolidation; and then come in all the monopoly arguments against that. But those arguments hardly have the best of it, as anyone knows who has taken frequent journeys over routes parceled out among several little roads, with their conflicting connections, delays at junctions, and retail rates; and over the same routes after the little roads have been consolidated, their connections and ticket-books unified, and their rates brought to the wholesale standard of big enterprises. But to return to the general rate question. *General* extortion is charged, but, on the

* "The Railroad Problem", p. 62, quoted in Daniels on Finance.

whole, unreasonably: our freight-rates, despite our vast uninhabited stretches, are far the lowest in the world; and in our thickly settled regions, our passenger-rates compare very favorably with all others; and moreover both rates are steadily declining. How much of this is due to government regulation, and how much to the inevitable action of competition, is very hard to determine. With us government regulation is in its infancy, and has made mistakes. It has not yet always succeeded in getting its rates adhered to, and, as it has greatly insisted on rates in proportion to distance, regardless of competition at certain points, it has prevented the roads holding each other to agreements regarding competitive places which might enable them to be easier on non-competitive places.

388 (1). Constitutional questions. The state's right to regulate the roads arises from the fact that the roads are the creatures of the state. Whether the state owns them or not, they are natural monopolies, and with us exist only by the use of the state's right of eminent domain: so the state has the right to prescribe the conditions of their existence (154 b).

But suppose a road is built without any understanding regarding rates, or, for that matter, *with* an understanding, it is a question whether the state has then a right to impose new rates. It has been claimed that the conditions under which a company builds a road, constitute a contract with the state; and the Constitution of the United States (Art. II, Sec. X) provides that no state shall pass a law impairing the obligation of contracts. But under the Constitution (Art. I, Sec. VIII) the United States has the right to "regulate commerce between the several states", and can probably pass laws under that provision which would help remedy the difficulty. As to the individual state, it is a question whether the constitutional provision affects a state's relation with its citizens, or the relations of citizens with each other: for instance, each man holds his land from the state, and yet the state

can take it from him by eminent domain. But eminent domain was an established institution before any American state was; it is part of the original understanding—the unwritten constitution, and therefore tacitly exempted from interference by later laws; and it looks as if a corporation in receiving a charter, had to admit certain rights as held in reserve by the state for the public good. Moreover, for a long time past, most charters have been granted subject to amendment or repeal.

If the charter creates a virtual monopoly, of course the case for the state's right of amendment is all the stronger. But a city is not a state, and if a city makes a contract with a street-railway company for a rate of fare, that is clearly a contract, not of the state with its citizens, but of citizens with citizens: the state cannot interfere there; the Constitution of the United States clearly forbids.

388 (j). Taxation of franchises. Yet if the railroad is taking too much money from the people, the state could amend most any recent charter, or both the state and the city could tax the franchise, unless something in the state constitution might forbid. There is a good deal of agitation now for state legislation making the right to tax all franchises perfectly clear. New York passed a law to do it in 1899. Nevertheless, taxing a franchise, either by the city or by the state, does not cover the whole case, especially (as we shall see more particularly later), as taxation for any purpose but the raising of revenue, is very doubtful policy. Moreover, it is conceivable that if fare and freight were made expensive, and then the money taxed away from the roads, enough might be got to run the whole government, and yet it would be solely at the expense of those using the roads, and all others would escape taxation. Perhaps, tho, those who do not use them, directly or indirectly, are so few and pay so little in taxes that, as in the case of bridges, the question concerning them may be regarded as one of the trifles that the law does not take into account.

*388 (k). Corpora-
tion graft and
political graft.*

The fair adjustment, then, would seem to be to keep charges at the point where the roads can make a fair return on capital and pay about the same rate of taxes that other property does. That assumes, however, that the railroads can all make money enough to do all those cheerful things; but in the last decade of the nineteenth century, most of the American railroads were bankrupt. They had been built faster than business had grown to support them, and very often the men spending the stockholders' money incorporated themselves as "construction companies" and "car companies", and then paid those companies enormous prices to build the roads and equipments.

It does not follow, however, that the roads would have been more prosperous if they had been government institutions. Probably, however, their officers would not have been less so, for as governments run things in America, the politicians in charge of such public works as we have, are not generally supposed to suffer from lack of prosperity.

*388 (l). American
attempts at gov-
ernment regulation.*

There have been several efforts to regulate the prices charged by the railroad monopolies. The chief of these in our country are the Rate Bill of 1906, not yet tested at this writing, and the Interstate Commerce Act of 1887, which is thus summarized by Professor Seager:*

"(1) Discriminations between persons, places and commodities were prohibited, and railroad officials granting discriminating rates were made liable to fine and imprisonment; (2) railway rates for interstate traffic were required to be just and reasonable, and any rate not just and reasonable was declared to be unlawful, and valid ground for a suit for damages by the injured party; (3) railroads were required to publish their rates and to change them only on public notice; (4) they were prohibited from charging a higher rate for a short haul than for a long haul over the same line and under similar circumstances, unless authorized to do so by the Interstate Commerce Commission; (5) pooling contracts between railroads were prohibited. The act also created an Interstate Commerce Commis-

* *Op. cit.*

sion to consist of five members and to be responsible for its enforcement and the investigation of cases of alleged violation.'

The act has been found defective in

"the attempt to prohibit, at one and the same time, discriminations and pooling. Experience has shown conclusively that competition between railroads involves discrimination. Competition in the railroad business means in practice making special rates to attract special traffic. But experience has shown with equal conclusiveness that agreements between railroads designed to put an end to competition can only be maintained when supplemented by pooling contracts. So long as the proportion of freight which each road is to secure depends upon its activity, the self-interest of railroad managers, or their credulity acted upon by the misrepresentations of unscrupulous shippers, will make discrimination in rates almost inevitable. The law undertakes to enforce two lines of policy which will not run together so long as different railroads act as carriers for the same territory."

The amendments made and authoritatively proposed in the act, as well as its judicial interpretations, for which there is no space here, are also well summarized by Professor Seager. Upon the success of the Rate Bill and the Interstate Commerce Law, with such amendments as they may receive, probably depends the question of whether the railroads and public utilities generally throughout the country, can well be left under private management with government control, or whether they shall be bought and operated by the government.

388 (m). Unsuccessfulness of government regulation not complete argument for government operation.

But it will naturally be asked: if government regulation has accomplished so little, and if government operation would save the wastes of competition, why not avoid the questions that *regulation* has not succeeded with, and come at once to entire government operation? But it is by no means certain that government's efforts, tho not accomplishing all they aimed at, have been useless in leading toward the increasing lowering of rates; and unfruitful as the attempt at regulation has been, the attempt at the

vastly harder task of operation would probably be equally unsatisfactory. There are two hundred thousand people in the civil service now. The corruption involved in dealing out these places is still, despite all the efforts of the civil-service reformers, among the chief obstructions to good government. The railroads employ four times as many men as the civil service; to make all these men government employees would make the corruption sixteen times as great. Their votes would simply make the tail wag the dog: instead of the government managing the roads, the roads would manage the government. The present trimming for the "labor vote" is nothing compared with what would grow up for the consolidated railroad vote (400 h).

Many people think that even now the railroads run the government—especially the state governments. But as long as the roads are in various hands, their interests are different, and they pull in opposite directions. Make a body of millions of placeholders whose interests are identical; if they would not have their own way in railroad management and everything else, to a degree that competition prevents anybody from having it now, it could be only because politicians no longer stand in dread of voters. The Italian experience may not be conclusive, but it is at least suggestive.

The officers of the roads in such cases, in America, would be "favorite sons" and "men with pulls". The genius for railroad management that now fills most of the presidencies and superintendencies with men who began at the brakes, would have to give way to the genius for political pulls; the roads, the shippers and the passengers would suffer accordingly; and the tax-payer would have to meet the deficits.

The effect on railroad salaries probably would be what it has been on telegraph salaries in England. As soon as government control took the pressure of competition off, salaries advanced, deficits began, and the taxpayers had to settle them.

Rates would be governed by political favoritism instead of the exigencies of business.

The experience of our Canadian neighbors is valuable in this connection. The London *Economist* states that the lines the government has built in Canada are located to foster constituencies, not trade; there was much corruption in the contracts; the roads have been run as political machines; much improving has been done for the sake of giving contracts to political allies; cost of operating has been higher, and number of employees greater, than on private lines; on account of political pulls, unfit employees are retained, and favorable rates are given to friends of the administration; politicians back enormous claims against the railways; and un-businesslike competition to help political favorites has injured private roads.

388 (n). "Labor" under government operation. The effect of government operation on strikes is one of the most important points in the whole discussion.

Of course a railroad is not like a factory, where Labor and Ability can have their quarrels without making the public suffer: if the factory stops, the public can get unmonopolized goods at some other factory, or for a time from the stock in the shops. But if there is a strike on a railroad, the public must simply do without the service until matters are adjusted, and at great loss of money and convenience. This certainly gives the public, as represented by the state, a right to prevent quarrels between Labor and Ability from stopping the cars (32). Government operation would certainly simplify this matter. We do not hear of many strikes in the post-offices: but they are much simpler affairs, and require, in large part, a higher type of Labor. But if each railroad employee were a government servant, resistance to regulations, or refusal to work, would be flat rebellion, and then there would not be as much question of suppressing it by force as there is about suppressing strike-riots now.

It is impossible to tell what the majority of the advocates of government operation of the roads really want: at one moment they seem to be calling for gov-

ernment control, not only in railroads but in all industry; and as soon as government sends police or militia, or even injunction, to enforce control, they are crying out against the tyranny of it.

There is much difference of opinion regarding state operation of the railways in New South Wales, but there is no difference in the opinion that the great strike of 1903 was better handled by the government than it could have been handled by a private company. But there happened to be a strong government, which probably would have backed up a private company with all needed efficiency. A weak government would have had a weak result in either case.

388 (o). Improvements possible under private control. There seems to be no just reason, however, why private managers of railroads should not contract with their men for definite periods of service or definite notice before quitting, and especially not to interfere with other men taking their places. But the unions probably would not let the men make such contracts, and if the men were to make them, they have no estates at peril for damages, in case they break them. There is a great deal of honor among the men—enough to sustain many of them in any sacrifice to their unions; but that very feature of their honor tends to prevent it sustaining contracts with the companies. Yet that is not true of all classes of employees. The locomotive engineers naturally must be men of more ability than most other unionists, and they quite generally stand by their agreements.

388 (p). Government control of private operations. There has been a great deal of talk of government's protecting the public by declaring conditions upon which Labor must accept employment under public franchises, just on the same grounds that it declares conditions upon which Ability must operate the franchises. The proposition certainly seems fair. Its details are simply to make it the law that anybody accepting such service shall give some stipulated notice before quitting work, shall not interfere with anybody taking his place, and

shall be subjected to imprisonment (fines are of no use against people who have no money) for violation or evasion of the law. There are now of course general laws against violence and destruction of property, and occasional timid laws against interfering with the Right to Work, but probably there is no law against a laborer who is really a public servant, quitting his place without notice. Such laws, however, would not be counter to the XV. Amendment of the National Constitution prohibiting involuntary servitude, because the men would enter upon the obligations voluntarily. But undoubtedly the labor agitators—especially those who make their living out of strikes—would in the first place bitterly oppose such laws; and if the laws were carried, would try to dissuade men from taking service under them. But such laws are so manifestly fair and in a good direction, that it is certainly worth while to attempt them.*

* As a safeguard in such matters, Professor Adams recommends that franchises granted to public-service corporations and industries with a "public use" shall contain the following points:

"Conditions of employment to be fixed for annual periods, some time in advance, by collective bargaining between representatives of the employers and employees, as provided in the Victorian Wage Boards (described on his page 496). Where either side refuses to elect representatives, or the representatives refuse to elect a standing arbiter or arbiters, such officials to be appointed by the governor or by the courts.

"Employment in such industries or service to be by individual enlistment or contract for a protracted period, say three months. Employers and employees to post bonds for the faithful performance of all agreements. The bond of the employees to be accumulated by retaining a percentage of their wages, as is done in the trade agreement between Wichert and Gardiner, of Brooklyn, and the Independent Union of Shoe-workers of Greater New York and Vicinity.

"Strikes, picketing and boycotts among such employees to be punished as criminal conspiracies, and special protection to be afforded the employer in case of strikes, by police, militia and injunctions.

"Lockouts to be declared illegal, with provisions for the appointment of a receiver for the industry when its operation is discontinued."

Whatever may be the way out, it is as certain as anything in the future of society can be, that the public will not long endure such inconveniences as it has lately been put to by railroad strikes; not to speak of the coal strike and the beef strike; and that, government operation or not, the law will inevitably take a more comprehensive hold on the matter, and that any man having any employment at all, will have to recognize some duties that he now ignores. (Compare the treatment of the subject in Chapter XX.)

388 (a). Government aids and politics.

In the United States, cities, states and even the nation have given "government aid" for building railroads, the smaller governments generally by money, and the states and the general government by land granted to the company out of the public domain, which the company could sell or mortgage. In Europe, "state aid" consists more frequently in the state building and running the railroads. England can hardly be said to give any aid at all: for the landholding interests in Parliament are so powerful that England does not give the roads the full benefit of eminent domain; but they have virtually had to buy their rights of way for whatever landowners hold out for. Nevertheless, they compare favorably in financial results and facilities to the public, with roads owned by government elsewhere.

It seems plain from our long consideration, that which is the better plan depends on the degree of civili-

388 (r). The conclusion.

zation. As far as the world has got, the best present means, as between government and private initiative, of developing railroads, seems to be to leave the building and running of them to individual initiative, as it is here and in England, with cautious government aid when really desirable, and to improve the government regulation of them.

389. Post-office and express.

In point of time, the conveniences governments probably began supplying next after money and roads, were post-horses.

They were supplied on the roads as early as Assyria. The postal system, like roads, was evolved for military reasons: the supplies of post-horses along the roads was begun for the transmission of military orders.

389 (a). City versus country. At first sight, there appears to be a good deal of robbing Peter to pay Paul in the modern postal service—making the cities pay for the remote regions. But there is really not as much as appears at first sight: for tho three quarters of the expense of the postal service of our whole country is in transmission; in thickly settled regions, probably more than two thirds is in collecting and distributing, and less than one third in transporting. Even if the thickly settled regions entailed more expense in transporting too, the Peter-and-Paul system would still be amply justified. We can all well afford to be taxed for such an agency of civilization as the mails. But in some respects it has gone beyond bounds.

389 (b). Favoritism to papers and periodicals By a perversion of the American demand for the diffusion of intelligence, the government is now losing some \$12,000,000 annually in carrying advertisements attached to magazines. This it does at a cost of five cents a pound where it receives but one cent. Most of this money goes to subsidizing a business outside of the legitimate periodicals that has grown up in consequence of the subsidy, and which consists of mere pretexts of periodicals, containing no literature or information of any value—what there is is mainly the product of scissors and paste-pot—the whole sandwiched between its own weight, and sometimes more than three times its own weight, of advertising pages, these latter largely devoted to worse than useless things, and often to abominations.

The circulation of the class of periodicals read by those who will peruse these pages, amounts to less than one tenth of one per cent. of the circulation of those which the government spends this money in carrying; and the circulation of the periodicals of an humbler but still respectable and useful character, constitutes not one tenth of one per cent. more. The rest pander only to

low tastes, while the government subsidy upholds them in competition with the periodicals that offer respectable matter, and limit themselves to respectable advertisements. Virtually all of the worthless and worse than worthless class has grown up under the government subsidy, to the indirect loss of the better class, and at the direct expense of the whole community.

Every dollar paid for postage-stamps contains a contribution of eighty cents toward these subsidies. If it were not for this waste in subsidizing the lowest class of periodicals, our Post-Office could sell letter-stamps for half a cent, and postal-cards for a quarter of a cent, and realize a surplus in place of the present regular deficit.

Such subsidies can be realized only by large circulation, and the most effective means of obtaining large circulation, of course is low price. So far, the two offset each other, but the large circulation attracts heavy advertising, and through it the benefit of the subsidy is indirectly realized. The five- and ten-cent magazines actually cost for paper and printing more than the subscribers pay. The deficit and an enormous profit are paid by the advertisers, and the advertising pays this enormous profit because the government carries it at a fifth of what it costs to do the service.

Where the Post-Office charges \$100 to carry 100,000 two-page circulars, it will carry 100,000 copies of them paged in a magazine for \$2. The publisher will get, at usual rates, \$166, out of which he must pay the deficit on his sales to subscribers. Leaving this out of account, his gross profit on each leaf (two pages) of advertising, per 100,000 copies (for printing and paper cannot be over \$12) is \$154. Loss to the government \$10.

Postmaster-General Smith said in 1901: "In the case of hundreds of such publications, whenever the publisher expends \$1000 in his venture, the government spends not less than \$2000 in carrying on that publisher's business." One publisher sends annually nearly 5,000,-000 pounds through the mails, at a net loss to the government of close to a third of a million dollars.

*389 (c). compared
with other
countries.*

The United States is the only great nation that runs its Post-Office at a loss. In most other civilized countries, the rates on periodicals are the same as on books. Great Britain publishes about 4900 periodicals; 40,000 new ones were admitted to our mails in the years 1903-5. These periodicals of ours kill books. In 1902, Germany published 354 separate books to the million inhabitants; France, 344, Russia, 85; the United States, 81. Spain alone of the alleged civilized countries, published less than we did—66.

*389 (d). Damage
to literature.*

Meanwhile these little spurts and spasms of literature sold at less than it costs, are unfitting the American people for any reading which demands and repays sustained attention. The people are giving up the book-reading habit, and taking to magazines instead. Since the population of the country has been doubling, the bookstores have decreased to one-third.*

*389 (e). Govern-
ment versus pri-
vate enterprise.*

That carrying mails is a government function, is established beyond reasonable discussion. But in considering what other matters are to become government functions, it is worth while to bear in mind three considerations regarding its running of the Post-Office. First: this heavy waste of money and of the possible popular capacity for improving reading, would be impossible if the mails had been carried by private industry for profit. Second: mails (for distributing circulars) are carried in all considerable cities by private industry in successful competition, regarding both prices and efficiency, with the national Post-Office. Third: if the mails were carried by private corporations, there would be redress for failures. This paragraph is written in the country, where regular communication with New York is important. For four days out of the last five, mails that

* For most of the facts in this exposition of our postal policy, I am indebted to articles by Col. C. W. Burrows in respectively *Construction* (Pittsburg) for June 10, 1905, and the *Yale Review* for February, 1906.

were due in the morning have not arrived until evening, and there is no redress.

In 1906 the United States government, after printing postage-stamps for fourteen years, returned to the habit of getting them from private companies, because they could make them cheaper.

In Europe, the post-offices are not confined as nearly as ours, to handling written and printed matter: they generally do everything that is done by our express companies. But that state service is not as good, on the whole, as the service of our express companies. It is slow and unaccommodating, and apparently the rush of American express business would swamp it utterly. Moreover, on the Continent, they do not do even their work with letters and papers as well as ours is done.

389 (f). Best
where people
watch it most.

Our people write vastly more letters than any other people, and so they watch the post-office closer (387, 392 c), and demand higher efficiency.*

390. Telegraph.

The European and Australasian governments do the telegraphing entirely. Their services compare very favorably with ours in apparent cheapness, but not in actual cheapness. The difference is paid, like our postal deficit, out of the government budget—ultimately the taxes, of course.

Despite the importance of our government's mail service, it probably would better not go into telegraphing. One reason is that the people generally would not watch telegrams as they do letters: fewer people send telegrams. A better reason is that the private companies on the whole probably do it cheaper. As already said, the English government, and probably the others, do it as we do our post-office, at a deficit; and the demand for telegraphic service is not, like that for mail service, of such infinite importance to the education of even those who do not use it much, that it would be wise to do it at the expense of the taxpayers.

* Regarding the Post-Office, see also p. 418.

Some of the important tendencies of government control of industries were so well and so entertainingly summed up in a Washington letter to the New York *Evening Post* during the great coal strike, and carry so much instruction regarding the conditions of government work inevitable in the present stage of political capacity, that it is well worth while to give space to some extracts. A word has been changed here and there for the sake of the connection.

"Suppose the government were in the coal-mining business, how would the employees be selected?

"They would be appointed on the patronage, or influence, basis, by quotas according to States and Congressional districts. Then, after the followers of those in political control had been given positions, the coal-mines would be put into 'the classified service', to insure a life position practically for the favorites thus selected.

"How would their services terminate?

"By death. Age or incapacity would not serve as a disqualification; sympathy for the needs of an employee would prevent his severance from the pay-roll, and any civil pension or retirement fund would be dismissed as un-American.

"What would be the rate of compensation?

"In the higher grades of work, too low to obtain the right kind of men. And yet it would not be safe to make the compensation adequately high, as this would mean a correspondingly enhanced prize for the political heelers. In the lower rounds of the ladder, however, the compensation would always be considerably more than in private employment.

"How would the work of mining be supervised?

"There would be permanent and efficient employees, bearing the title of 'deputy somebody' or 'administrative assistant this', who would get moderate salaries, and upon whom the real responsibility would rest. Above them would be a class of supervisors, politicians, at about twice the salary, changing with the administration of the Federal Government, and knowing little or nothing about the business.

"What would be the relation of the government mines to machinery, and progress in mechanical appliances?

"One of non-intercourse.

"Who would look after the details upon which economical administration rests?

"Nobody. It would be unfair to assign any man with a political future to so unpopular a position. Hardly any economy of administration in a mill or a mine can be suggested which does not hurt somebody's feelings or intrench upon personal profit or interest.

"What would be the relation of the mine employees to politics?

"They would organize into a union, and employ lobbyists to intimidate Congress into raising their salaries, extend their vacations, and procure for them various privileges.

"How would the mine get its supplies?

"On contract competitive bids where honest men were in charge of the administration. Otherwise the specifications would go out so worded as to throw business into the hands of friends who happened to possess certain articles, or to hold an agency or monopoly on them. Then the price would be made whatever the traffic could bear.

"How much would it cost to mine coal under these circumstances?

"From two to three times what it costs now.

"Would the American consumers, then, be charged \$20 a ton for coal?

"By no means; they would be charged \$6 a ton, and the rest of the cost would be made up through general taxation, the methods of bookkeeping employed being such as to disguise the operation.

"How would the public view such a management of the coal-mines?

"With supreme satisfaction. The labor unions would like it, because they would have complete control there as against disputed control in outside employments. They would cite the anthracite mines as a great example, upon the basis of which they would ask to have the wood-chopping industry of the country absorbed by the Federal Government. Politicians would like it because it would give places and positions which they could control. The Sunday-school weeklies would teem with illustrations of the heroisms of Uncle Sam's servants in the coal-mines. Congressional oratory would exhaust itself in eulogies of the ability of the government, and of the orator's own party, to meet great questions, to do things, to accomplish something, and to leave carping and criticism to outsiders and Mugwumps. Those who had failed in private business would especially derive satisfaction from the thought that, in an enterprise in which they were stockholders, the Morgans and the Wanamakers were being distanced. The patriotic people of every class and condition would rejoice in the reflection that whatever the United States did was done right. The stray, solitary man who challenged this view would be almost ostracised. It is better to be a patriot than a pessimist.

"Would the operation of these mines lead to application of the same principle to the management of beef-raising, or of selling groceries?

"Undoubtedly. The United States, with its unbounded resources, is rich enough to carry the load of wasteful production in a considerable number of industries.

"GOVERNMENT MANAGEMENT IN OTHER LINES."

" Not an answer has been given which is not sustained by an abundance of experience in the present dealings of the United States Government. We have a printing-office here of 4000 employees, whose lack of modern machinery and other appliances of economical production is such that the printer's art would look backward with a vengeance were all the publishing business of the country put on a similarly socialistic basis. The control of the labor unions there is absolute. Uniformity of work and wages is practically complete. Its employees, selected on the spoils basis, have been given permanency by 'civil-service reform'. Not a bureau of the Federal Government, within present recollection, has been established on any other basis. The census clerks were thus employed, and civil-service reform only comes in at a late date to act as an embalming agent. The rural free-delivery service has afforded to the spoils system a grand debauch, and yet the present President is a good friend of the merit system. Civil-service reform was never healthier than now, and still its practical conquests have been small.

" The Post-Office Department shows some wonderful results in the way of celerity, security, and certainty wherever it has clung to the coat-tails of private enterprise, as in the fast mail trains of our competing railroads, and in its belated employment of pneumatic tubes. Wherever it has done things itself it has done them badly. It was chased for years by the inventors of canceling-machines, until finally, surrounded and overcome, it most reluctantly surrendered. The private manager would have chased the canceling-machine, just as Commodore Vanderbilt offered a prize to anybody who would invent the brake he needed.

" No student of postal affairs can take seriously the deficit of record. The actual one, with the free rent of millions upon millions of dollars' worth of property, owned and cared for and repaired out of the general funds of the government, would be worth while. A score of items enter into the calculation which prevent the postal deficit from being regarded as more than a pleasant fiction of the Department. The letter-carriers are to-day welded into a union, and have sent one of their number, according to current report, to California to try to defeat Congressman Loud for reelection, because he had opposed an increase in their salaries. The organization does not suggest that there is any lack of competent men at the present rates, but merely deems its proper salary that which through political manipulation it is able to get. And still the post-office is the great American idol.

" The government receives ninety-three cents a pound for carrying your letters and postal cards. A private concern

could afford to pay millions a year for the monopoly privilege of carrying letters at half the present rates. The Department is 'squealing' all the time because it has to carry the newspapers so cheap—a cent a pound—and yet the express companies, those boasted monsters of monopoly and watered stock, are competing in certain ranges of territory for that very business. It is too bad that Australasia is so far away that its pitiable and dreary experiments in state socialism may not be more readily available for our guidance."

CHAPTER XXIX.

PUBLIC WORKS (CONTINUED).

*Municipal.**

391. Street Rail-ways. In street-car accommodations, America leads the great nations immeasurably. And yet America did not have the first electric cars. **391(a). Evolution.** Germany had the first, but America has introduced them much the fastest of all the countries. Germans wait for their paternal government to take care of them, and governments move slowly; Americans see chances to make money, and take care of themselves promptly. Germany's having the first electric cars did not result from her being the European leader in street railways. Great Britain was the leader, especially in Scotland. In municipal operation, too, she was the leader, but **391(b). Municipal operation Increasing in England, little on Continent, in America none.** in a qualified way, like that of the French railroads (388 a). In 1899, in Scotland, two-thirds of the street railways were owned by the cities, and leased to the companies oper-

* In this chapter my obligations to Dr. Albert Shaw's two volumes on "Municipal Government" are so many that to acknowledge each one would require including his name in nearly every page. I am also indebted for much recent information regarding the United States, to Professor Zueblin's "American Municipal Progress", and to the Proceedings of the National Municipal League, especially the volume for 1906. This organization well deserves the support of every good citizen, and its future volumes may be expected to be mines of valuable experience and suggestion. Their usefulness has been increasing at a geometrical rate.

ating them; and in England and Ireland, one-third. As said before, it is very important to keep in mind the difference between municipal ownership and municipal operation. The first is almost universally approved; the second very widely questioned.

At first Parliament forbade the cities to operate their roads. In 1882 one city—Huddersfield, was permitted to operate its railways. Since then, up to 1899, about twenty cities have obtained the right, and as the companies' leases are now rapidly falling in, many more are applying for it. Towns owning electric plants were particularly anxious to use them on their railroads, before, in 1899, there began a violent opposition to "municipal trading" as they call it (400 h, 414 a).

Sometime since, London began operating the trams in the Southern section. The results have been disastrous. The net income for the year ending March 31, 1906, was but a tenth of that from the Northern section, operated by a private company: there appears to be abundant evidence of graft—a thing until lately almost unknown in London.

Virtually all the European cities get large revenues from the street railways, even when they do not run them themselves. The Hamburg railways pay more to the city than to their stockholders.

There is little, if any, municipalization on the Continent. But minute regulation for frequency of cars, plenty of seating-room, etc., is almost universal. There, however, political regulation is easier, and more people live in the cities where they work, and even in the same buildings, than in Great Britain or America. Therefore there is not as great need of street railways or as great crowding of them. But if our people were to get more in the way of living near their businesses, probably it would not relieve the frightful overcrowding and discomfort of the street railways: for the companies would simply run fewer cars; they would not run any more cars than they could run at a big profit, until they were compelled to.

This of course is an argument for the cities taking

the roads by eminent domain, and operating them, but that ought not to be necessary. The cities could compel decent accommodations from the companies, if the art of politics and the quality of the suffrage were up to it: it is done in many places in Europe (426-426 b). Already some charters here have made one hopeful condition for safety—that the employees shall have enough time for sleep. Our *companies* have inspectors constantly walking along their lines or riding short distances in their cars, to see that things are conducted in the interest of the owners. Why should not the *people* have similar inspectors to see that things are conducted in the interest of the people—that cars are run with reasonable safety, cleanliness, politeness and frequency—not as at present, from the Madison Avenue line in New York down through most lines in the United States, just infrequently enough, even in slack hours, to keep the cars over-crowded? Mayor Cutler of Rochester asks the authority to appoint a Commissioner of Public Utilities who shall supervise them *all*, and receive all complaints, with power to call for papers and accounts, investigate under oath, and redress all grievances.

Some answers to the question in the preceding paragraph are not far to seek: one is the slowness of legislatures and city councils in providing the statutes and ordinances obviously required for the public convenience—a slowness aided by corruption from the companies. Another reason is the probability that even if the laws and the inspectors to help enforce them were provided, the inspectors would be bought off. When the government is unable to provide even this moderate regulation of the roads, what of its capacity to manage them entirely?

391 (d). Municipal sharing of profits advancing in America. In America, until very lately, most of the cities simply gave away the franchises. Chicago's street railway franchises are easily worth \$75,000,000, and the city never had anything from them. Even during the early years of this century, Mayor Arkbridge of Philadelphia ignored

a responsible offer of \$2,500,000 for privileges which were subsequently *given* to existing companies. Yet the companies had before turned all the streets their tracks went through, from cobblestones to asphalt. Baltimore in 1860 sold her franchises for a fifth of the fares. Later it was reduced to nine per cent. The proceeds take care of all the parks, and have already bought several new ones. Cincinnati, Providence and Richmond receive five per cent. of the fares. Some other cities get revenue from the roads in various ways, and the tendency to do so is becoming general.

391 (e). Ownership in America. The United States has as yet no municipal operation. Up to 1907 the only noticeable cases even of municipal ownership, were Boston's ownership of her subway, and New York's ownership of the Brooklyn Bridge railway, both of which the cities leased to the operating companies. But New York has loaned her credit to a private company to build the subway, which, after a long lease, is to be accepted in payment of the loan. It is claimed that the Boston subway is paying interest on its bonds, and has a surplus for a sinking fund that will pay off the principal before the debt matures, leaving the city the valuable source of revenue free of all liability. Early in '99, Detroit was preparing to buy all her street railways. But the courts had already waked up some opposing amendments of the state constitution that were passed when the state had heavy losses in the infancy of steam-railway building. Unless the constitution is again amended, these render government ownership impossible. Yet the city has lately taken possession of the tracks of a new company, with threats to destroy them; and the matter is before the courts. In Cleveland in 1899 the problem was enlarged by a great and destructive strike, with dynamite and boycott of people riding in the cars.

Since 1897 Cleveland has been making a fight for a three-cent fare. The old combine running the street railroads, and running them well, has fought

the matter up to the United States Supreme Court. Mayor "Tom" Johnson has at last developed an independent company running on one street at a three-cent fare, and himself acted as motorman on the first car. He fought for this line through twenty-five injunctions, and the twenty-sixth that is now impending in the Supreme Court. If he gets the decision, he will spread the new line into regions now monopolized by the old company. He forced the old company for a time to sell seven tickets for a quarter, and to give a very high class of accommodation, but the five-cent fare has just been restored.

San Francisco lately took a line whose franchise had expired, but the voters refused to operate it.

The voters of Seattle in 1906 refused to authorize bonds for building municipal car-lines.

There are two main reasons alleged in favor of municipal operation.

391 (f). Argument for municipal operation. First, it is generally realized that monopolies will be run for the benefit of the owners, and it is claimed that the only way to have them run for the benefit of the public, is for the public to do the running. The weak point in that reasoning is that here in America, with our large ignorant and venal vote, the public is generally run by the politicians, so that if the monopolies are nominally run for the benefit of the public, they will really be run for the benefit of the politicians.

391 (g). American and European conditions. In 1905, Mayor Dunne of Chicago, who had been elected to municipalize the street railways, got an expert, Mr. Dalrymple, over from Glasgow, to get the benefit of his experience. His opinion regarding municipal operation in America underwent some changes during his stay among us. When he arrived, he said:

"I see no reason why Chicago, or any other city in this country, should not be able to own its street railways and to run them with as much success as we have achieved at Glasgow. I admit that the proposition at Chicago is a much larger one than the one we had to tackle, but at the bottom it is the same. . . .

"The people of Glasgow would not go back to the old days of private ownership for anything in the world. I am not saying that a company could not do as well by the public. I know, in fact, that it could, but it would be doing so with a somewhat different end in view. For a company has always the shareholders to consider. And I have to admit that you will find people in Glasgow to-day—quite influential people, too—who say that the street-car service is not profitable."

After he had become acquainted with our democratic ways, he said:

"To put street railroads, gasworks, telephone companies, etc., under municipal ownership would be to create a political machine in every large city that would be simply impregnable. These political machines are already strong enough with their control of policemen, firemen, and other office-holders.

"If, in addition to this, they could control the thousands of men employed in the great public-utility corporations, the political machines would have a power that could not be overthrown. I came to this country a believer in public ownership [operation?]. What I have seen here, and I have studied the situation carefully, makes me realize that private ownership [operation?] under proper conditions is far better for the citizens of American cities."

Chicago is, in 1907, in the very safe position of having from the legislature power to own street railways, but none to operate them.

Nevertheless, it is to be considered
391 (h). *Glasgow.* that in the report of the Glasgow tramways for the year ending May 1, 1905, prepared by this same Mr. Dalrymple, it is stated that "the total revenue was £764,790 and the working expenses £387,167, which leaves a profit of £377,623 or 13.6 per cent. on the capital expenditure of £2,763,381." These facts are quoted by a writer to the *New York Times* in January, 1906. He adds:

"Deduct both interest on capital, £59,906, and sinking fund, £46,919. Also deduct the local taxes, which have been increased from £2,485 to £38,316 per annum since the city took over the lines, and the £5,434 exacted by the Imperial Government as income-tax on the profits, besides the £25,000 paid to the city chest as a rental for the streets, and remembering that out of revenue the lines were kept in a perfect state

of repair, there was left a surplus absolutely net of £202,038, 7 per cent. on the capital.

"The Tramways Committee is so ultra-conservative and so anxious that its rich profits shall not be raided too fast for 'the parks and popular free music' that it puts a part of this surplus down in the books as 'permanent-way renewals fund and depreciation', tho it has provided beforehand both for upkeep and sinking fund.

"The truth is that the municipal street railways are so fabulously rich that the managers are afraid in some cases to let the people know all at once what gold-mines they have got, lest they should lose their balance and abolish fares altogether. Mr. Bellamy, the able General Manager of the Liverpool system, told me in September that on their lines they pay off yearly 10 per cent. of the real capital cost, tho the city has increased the average length of the 2-cent stage 240 per cent. since it acquired the lines, and has reduced the average fare 40 per cent., a gain to the traveling public of \$1,500,000 a year. 'The fact is, Martin', he said, 'the financial position is so rosy that we dare not expose it fully. We are accumulating a surplus which will make us impregnable to all the assaults of fortune, and then we shall bring down fares with a rush.'"

391 (1). Great Britain versus America.

There is much evidence on the other side, as will be seen later. But the conflict of evidence does not seem to forbid the belief that municipal tramways have succeeded in Great Britain. But if there were no conflict at all, it would still be far from proved that similar success would attend their operation in the United States at our present stage of political evolution. Great Britain, unlike us, has a restricted municipal suffrage, no confusion of national with municipal politics, almost entire freedom from municipal graft—at least until something like it has begun to appear in connection with municipal trading; and a set of social conditions under which coöperative trading has grown to great success, and even coöperative production has reached some respectable success—neither of which evidences of coöperative capacity have our people ever succeeded in demonstrating. Farther evidence on the British conditions will be given later.

Mr. Dalrymple's expert opinion, however, loses sight of the distinction between ownership and operation, and does not necessarily preclude municipal ownership.

The fact seems to be that if politics were sufficiently advanced to own and operate the roads, it would be sufficiently advanced to regulate them without owning and operating. In Washington, where Congress can do anything with the roads that it pleases, and where local graft is too small to control Congress, they are run very well.

391 (j). Nashville. The efforts of Mayor Head of Nashville, show what good government without operation, or even ownership, can accomplish. About the opening of the century the street-railway company claimed a perpetual franchise. After a bitter and expensive fight in the courts, he got them to agree to sell out at any time after twenty years should have elapsed, at a prescribed method of valuation, after a year's notice; to pay the city ten thousand dollars for failing to keep the streets through which they passed in condition during the litigation; to give the city a park costing \$125,000; to pay the city two per cent. of their gross income till it should reach a million dollars a year, and three per cent thereafter; to spend a million and a half dollars in rehabilitating their plant, which had been permitted to run down during the preceding ^{1 1/2} years; to give universal transfers; to run all cars under a central shed where transfers could be facilitated; and to keep the street between their tracks and for two feet outside, in as good condition as the city keeps the rest of the streets. The company spent a million more than was stipulated, has enabled the city to keep up its parks and buy more (it had none before the agreement); has given good service; and its securities have more than doubled in value.

391 (k). Rochester. In Rochester the Board of Health has forced the railways to provide good cars, and has prevented freight-cars from running during the crowded hours between 6 A.M. and 8 P.M. In that city there were a great many franchises unused, but held onto in order to keep competition out, as are many municipal franchises of all sorts in England.

One strong reason for municipalization is a very sound argument for ownership, but hardly touches on opera-

*391 (1). The "In-
crement" in
franchises.* tion. It is that, as the cities grow, the business of the roads increases, and more-

over it increases without a proportionate increase in the expense—no greater managerial ability is needed, and cars are less and less apt to run partly filled; in this way, there rolls up a sort of double “unearned increment” (74) of which the public should have the benefit.

It may be asked: why is the public any better entitled to this unearned increment than to that on land? For the very reason that each landowner is entitled to the increment on his own land. There is no question about the public being the owner (unless it has given it away, or sold it, as to the purpose) of the land on which the street railway runs—of the instrument which produces the increment; and as, when that instrument is a natural monopoly, the enthusiasm and competition of individual ownership cannot be applied to it anyhow, there is no need for the public ever to part with it. On the other hand, without the enthusiasm and competition of individual ownership in ordinary land, we would never have got beyond the barbaric conditions universal among peoples where private ownership of land does not exist (75).

*391 (m). Should be
leased but not
sold, and be under
one management.* As securing the unearned increment of the franchises to the public, much is to be said in favor of the recent English method,

. . . and that of the New York subway, under which the city retains the ownership of the roads, or at least of the franchises (it may not be necessary for the city to build the roads), and leases them to companies. That seems to be better suited to our degree of political development, even tho England may be ready for the farther step of the cities operating the roads themselves. Retaining a share of the receipts, as Baltimore, Cincinnati, Providence, Nashville, Richmond and an increasing number of other cities do, is only one form of lease.

There is a reason for the public sharing in profits

rather than receipts: sharing receipts, regardless of whether a profit were realized or not, would discourage making new roads; besides, as already shown, profits increase faster than receipts. There is an apparent reason the other way, in the fact that bookkeeping can juggle profits; but it ought to be easy to guard against that.

To encourage companies to make the roads even if they had to give them up in time, the rent could be made low because of the reversion, just as in other leases, or the lessor could have the option of paying for the lessee's improvements or renewing his lease.

As stated in several cases before, it is desirable that the roads of any city should all be under one control, to save duplication of roads and managers, and also to facilitate transfer tickets. But that need not involve the city's running them. In Germany each city's roads generally belong to a single company, but the city regulates them very well indeed.

True, the single management prevents the public having the benefit of competition in fares, but the public could not very well have that, anyhow, unless more than one road runs through a street, tho of course there is room for some competition in parallel streets. Low fares can be secured, not only by government regulation, but also by the tendency of a broad-minded management like that of the Metropolitan Traction Company in New York in its earlier years, to see its own advantage in inviting large business. That management, however, has fallen off terribly since it was a new broom. Moreover, low fares are often secured by the general influence of those vast indistinguishable agencies which go to make up habit and popular opinion. The fares in Columbus are seven for 25 cents, and in Rockford twenty-five general tickets, or fifty school tickets, for \$1, and on one line in Cleveland, three cents.

In Glasgow and probably some other places, they have "zone" fares, starting very low for a mile from

the centre, and then increasing mile by mile, until they run up to ten cents. The result is that the workmen do not go to the country, but remain huddled in the zones of cheap fares.

391 (o). *Deteriorating private services may compel municipal experiment.*

Altho I have tried to state the situation fairly, the reader in favor of municipal operation of street railways will probably assume that I have made the best case against it that I could. And now (1907), six years since I made most of that case, I am bound to confess that regarding the rapid-transit roads of my own city of New York, I am much less opposed to the experiment of municipal operation. In stating this, I shall probably at least be held free of the charge of saying it without a realization of the enormous risks of the experiment. When I made my case, the great monopolies controlling the roads were newly organized. They were more than suspected of holding their franchises in consequence of great political corruption, and they were on their good behavior. Moreover, as already said, they were new brooms. Since then they have had time to grow careless and indifferent, Tammany is again in power, and apparently there is no agency to curb their shameless and (it may perhaps be hoped) short-sighted avarice. To swell their profits, they have introduced obstacles in their system of transfers, and, in order to operate only crowded cars, have steadily diminished the number of them in slack hours, and of those continuing beyond points—such as the Grand Central Depot and the 86th Street car-barns—where many passengers disembark, thus forcing many changes and waits. At points where it was once easy to find a car with an empty seat, nearly every passing car now contains many passengers holding on to the straps; the passenger who once had a good chance for a seat, is now often lucky if he can get a foothold on the steps or the running-board, the tracks are so poorly cared for, and left unsanded, that on going up hill the slipping cars are passed by people on foot; and the motormen frequently

pass would-be passengers on the few occasions when the cars are not full. Early in 1907, the companies claimed that many men were laid off by sickness. A motorman told me that the men were playing sick to get a chance to hunt up better jobs, and concluded: "This road has gone onto the bum." The day when this is written, I read Dr. Clark's statement that in Australasia, a government that did not provide decent railroad accommodations could not hold office. True, "they manage these things differently in France" (and Australasia), but despite the influences controlling elections in New York and America generally, the abuses of many of our city railroads have reached the point where *any* change of management stands a good chance of being a change for the better; and even if one should turn out for the worse, it would at least bring with it much valuable education. The corruption of all government agents by the railway corporations is so great, that it may make all attempts at mere government regulation farcical, and perhaps the corruption in government operation would be no greater.

391 (p). Some other experiments desirable first. And yet before we have tried all the possibilities of regulation, we should not be driven to the extreme of municipal operation. The recommendation already made of more commissions for the regulation of private management, might be tried for cities, as it has been (but none too effectively) tried for states; and the powers and duties and emoluments of the commissions that exist, enlarged so as to enable them (if they will) to hold the roads up to the greatest practicable efficiency. The commissioners would probably best be elected by the people. The state railroad commissions, which have not been elected by the people, have generally been mere creatures of the railroads, and often appointed at their recommendation. Yet the work of railroad commissions is easily open to the judgment of the people and, if they were elective, to prompt punishment for dereliction. That it might be prompt, the term of office should be annual, with indefinite eligibility to

reëlection. If such commissions always fail, the only remaining experiment seems to be government operation. It should be remembered that under any system of mere government regulation, the responsibility is divided between the railway corporation and the government; while under government operation, the responsibility would be upon the government alone, and the issue would be clean-cut. That it would be as effective and permanent a remedy as the out-and-out advocates of municipal operation generally believe, I do not dare to hope; but the logic of events is converting many opponents into advocating it, at least as an experiment. Meanwhile, I let my arguments against it stand as they were originally written. They attempt to show the dangers of the experiment, and there is some slight chance that they may fall under the eyes of a person here and there who may have some little influence in guarding against those dangers. And behind it all, I have a misgiving that the result of the experiment, if it is tried before the arguments find their natural way to oblivion, may after all only confirm their validity.

392. Waterworks. We come now to Government's relations to waterworks. We find them in many of the ruins of early civilizations, especially the Roman; and we find the waterworks themselves in many primitive civilizations of our own day, in Asia and Africa; and we know that all these were or are government works, because under the conditions before modern civilization, coöperation was never equal to such work.

In modern Europe, especially in the more paternal states, municipal ownership is the rule. In America, waterworks were generally begun by private companies, but the tendency has been more and more for the municipality to buy out the companies or start its own works. In the first half of the nineteenth century, most of the works were private; at its close, probably most of them were public. The size of places

has affected the question materially: the little works of small places have been more readily constructed by private capital. The works in cities of over 30,000 are generally municipal. A peculiarity about water-

*392 (a). Why fit
for municipaliza-
tion.* works favors this, tho the waste and corruption in building government water-

works have often been frightful; but after they are once built they require little management, and so afford little field for corruption.

Yet while water-supplies have sometimes been well and economically managed by cities, much—probably most of the New York work, has consisted of enormous swindles.

But on the other hand, early in 1900, a gigantic corporation loomed up in possession of all the water-rights affecting cities of the lower Hudson valley, including New York itself. This attained the proportions of a natural monopoly, and public opinion was strongly in favor of the municipality forestalling the monopoly. The scheme was laid away at least for the time.

*392 (b). Health
questions.* Waterworks ought at least to be under the absolute control of a Board of Health that cannot possibly have any financial interest in them: lately Philadelphia and Passaic were full of typhoid from their water-supplies, and in Philadelphia, long after the remedy was plain, it was impossible to apply it, because rivals who wanted to benefit by the work, got the politicians at loggerheads about it.

Many cities are sorely perplexed over the purity of their water-supply. Before Pasteur discovered bacteria, it was quite the custom, as in Chicago, for waterside cities to empty their sewage into the water to whose position they owed their existence, and then, unless the water was salt, pump it back to drink. After Pasteur taught them where their typhoids came from, they ran their sewers, where practicable, a mile or two farther out, and drank a higher dilution. They are now learning that this will not do, and are struggling with questions of inland supply, deep wells, filtration plants and sewage disposal. Probably the best and cheapest solu-

tion of the question is one that political capacity has not yet risen to. Laws might be passed (in fact some have been passed, but neglected, in New York, for instance,) to prohibit the pollution of fresh water (or of salt either, where bathing can be harmed), and requiring the rational and even profitable disposal of sewage that the soil is crying for; but it would be very optimistic to expect the enforcement of such laws before people become more intelligent and law-abiding. A minor difficulty would be that sometimes states would have to concur to protect the confluent streams of a watershed lying in both. Such laws would be very interesting experiments, however, and perhaps not more hopeless than most attempts at betterment by statute.

392(c). Municipal management naturally wasteful. Waste is a frequent evil. Recently in Liverpool, it was found that two thirds of the water running into the city, ran out again through leaks and taps needlessly left open. This is probably about the case in the vast majority of American cities to-day, at least where meters are not used. Under private management, the company would be taking care of its own supply: now the politicians take care, and characteristically poor care, of the public's.

Yet while private companies are apt to do better work and at less cost for actual service, it cannot be denied that in any sort of service, their interests may sometimes conflict with the interests of the community: they may render *less* service than the community needs, as was shown in the lack of salt-water mains for putting out fires when the San Francisco earthquake broke the fresh-water mains from the interior. The water-supply was the affair of a private company which had obstructed providing a supply for fires from the bay.

Waterworks are, of course, generally a natural monopoly—competition which involves more than one pipe-line in a street, is not practically possible, even in large places because of the large size of the mains; and has not been at all frequent. Moreover, when it is, it is a frightful nuisance from frequent tearing up

of the streets. On the whole, then, municipal water-works are to be approved, despite municipal corruption, and largely for the same reason that makes the Post-Office a success: everybody watches (387, 389 f) the water-supply, and if it is bad, complains and votes against the government.

Gasworks are cheaper to build than
393. Lighting. waterworks, and, perhaps for that reason, are not as generally municipalized: so competition is more frequent in gas than in water: two or three companies frequently having gas-pipes in the same street—a condition facilitated by their pipes being much smaller than water-mains.

*393 (a). Craves
municipalization
less than water.* The argument for municipal ownership, then, is not as strong as for water, especially when we consider that gas is not used by everybody, and requires more management than water after the works are erected. Cities not making their own gas generally charter more than one company. In America, of course, they charter as many as can bribe the authorities, tho fortunately some of the authorities cannot be bribed. In Europe generally, people do not have their streets torn up by more than one company, and they regulate the prices and quality of the gas produced by that one. Hamburg has even leased her own works to a private corporation, but she keeps her hand on that corporation. In all of Germany there is but one city (Frankfort) chartering more than one company, and gas is higher there than anywhere else in Germany.

The experience regarding municipal ownership of gas-plants, corresponds with the conditions just given. Paternal Germany leads off, of course, with a majority of the big cities owning gas-plants. The smaller cities, as in the case of waterworks with us (and apparently the world over), do not municipalize gas as generally as the large ones. Great Britain, notwithstanding it is, among European nations, at the other extreme from Germany as regards paternalism, nevertheless comes

next with proportion of municipal gasworks, they being about one in three, and certainly increasing.

Glasgow and several other Scotch cities, likewise some German cities, light the courts, halls and stairs of tenement-houses with gas, and Glasgow makes the owners pay for most of it. Some cities, tho, spend as much for it as in lighting streets—this on the principle, of course, that a light saves a policeman.

Despite England's lack of paternalism, she comes next to Germany in municipalizing gasworks. Public opinion demands them in both those countries more generally than in the rest of Europe, there being a larger proportion of people given to reading, who want abundant light, and who can afford to pay for it.

393 (b). Cheapered by it in some places in Europe. Apparently municipal ownership has cheapened gas in Great Britain and Germany. It is often supplied as low as twenty-five cents, while in America it is often above a dollar. But it may be even yet too early to be sure that it is not cheapened in Great Britain and Germany by an increase of taxation. In London at the time of writing, the gas is very bad.

Whether we would better adopt municipalization on the chances, we can tell better after we have attained decent government. If most of our present city governments were giving us gas for fifty cents, they would be adding more than another fifty cents to our tax-bills, by corruption in the works.

We have not had much experience in that sort of finance in America, in connection with gas, because there have been few municipal plants. But the book-keeping for gas and water and electricity has been *393 (c). American reports unreliable but increasingly discouraging* something fearful and wonderful in the direction of trying to show a profit. Published reports are very unreliable. The mayor of Philadelphia lately reported a year's profit of \$160,000 on gas, while a Massachusetts committee investigating Philadelphia experience for their own guidance, reported a loss of \$1,000,000.* The gen-

* Daniels, *op cit.*

eral American experience in municipalities operating gas-plants, has been very slight: people are too afraid of the political rings, and the rings can get too much out of the existing companies for letting them alone. A few towns have bought their local gasworks within the last score of years; but on the whole, people do not trust universal-suffrage government far enough to want to disturb, in its favor, the existing state of affairs. Richmond and Philadelphia have long had their own works, but tho Philadelphia has owned hers for more than half a century, she has lately leased them to a private corporation, municipal management being a failure, probably owing to corruption. The lease fell in in 1905, and was renewed for seventy-five years, by a corrupt government on terms that the community would not stand, and the government was ousted in consequence. Toledo, after ten years' use of a municipal natural-gas plant, leased it to a private company at a rental insufficient to pay interest on a seventh of what it cost, and finally sold it at a tenth of its cost. Corruption was suspected in both transactions.

By 1905, the lighting of New York had become so monopolized that, at the time of this writing, many citizens who distrust that city's capacity to manage an industry, think a municipal lighting plant would be better risked than a continuation of existing conditions. And the same condition is rapidly developing regarding the surface railways.

393 (d). Peculiar case in Richmond. There seems no doubt that the Richmond, Virginia, public gas-plant had more than paid for itself over twenty years ago, has paid into the city treasury over \$300,000, has reduced the price of gas from \$1.50 to \$1.00, and has furnished free gas for streets and public buildings, worth \$500,000 more.* All of which proves much municipal political capacity in Richmond, but unfortunately does not prove it anywhere else.

* Zueblin, *op. cit.*

Since the foregoing paragraph was written, the Richmond bookkeeping has been proved fallacious, the works have been proved to have been run at a loss, and to need renovation. But I let the paragraph stand as one more illustration of the uncertainty of evidence in these matters.

393 (e). Other American cities. In Cleveland the gas company pays into the city treasury 6½ per cent.—Professor Zueblin does not say whether of receipts or profits—probably not thinking it any more worth looking up than I do. The people have just voted against municipal electricity.

Until this year, 1907, Hamilton, Ohio, was very proud of her municipally operated gas and electric plants. The state auditor now reports that from Jan. 1, '03, to Jan. 1, '06, \$35,000 dead claims had accumulated, and a debt of \$13,431; that the administration was

"marked with evidence of mismanagement, extravagance and unbusinesslike methods . . . the employment of inexperienced men [with pulls?] to superintend important work where both mechanical and electrical skill were necessary . . . cost of production at times exceeded the schedule rates charged for the service. . . ."

Stubs and original memoranda of various kinds were missing, there was a shortage in the secretary's accounts, and the surety bonds of many officials had not been renewed in years. In the words of the report:

"Officials, ex-officials, prominent citizens and others were enjoying free service; while these accounts were duly charged on the books, apparently no effort had been made toward their collection or adjustment. Several individual accounts ranged from one hundred to eleven hundred dollars."

It need hardly be reiterated that the truth as to the success of gas municipalization so far, is hard to get at. In Chicago, for instance, chartered accountants claim that the municipal gas-plant has been running at a loss, while the mayor claims that it has been running at a profit.

Dr. Bemis (quoted by Professor Zueblin) says that all the municipal gas-plants are succeeding. It is edifying to have such definite information regarding the Philadelphia one (which Professor Zueblin, after quoting Dr. Bemis, says "was the football of politics . . . over half a century"), not to speak of those of Richmond, Toledo and Hamilton—so edifying as to give some impression of the quality of the information regarding the others. Other authorities say that the desire of the authorities to make a good showing, combined with bad systems of bookkeeping, make it impossible to tell whether they are succeeding or not.

In short, there had been no magic in municipal operation to make it different from the operation previously quite general in American cities.

Professor Zueblin states that "in Great Britain . . . over 100,000,000,000 cubic feet are consumed by half the number of people that consume 50,000,000,000 in this country". This he attributes to municipal operation. Whether it is at the expense of the taxpayers he does not say, perhaps because nobody knows yet, tho there is a growing suspicion that it is,—and Professor Zueblin plainly thinks that it ought to be!

393 (f). General considerations. Cities can do something for the gas-supply without owning it: they can keep it up to standard and regulate prices—the German cities and many others do that without needing competition (393 a). Some of the German cities have their gas tested every day, but that is probably more than many of our cities could do with any confidence in the test.

Besides the argument (which may not exist) of cheapness of gas and water, if people *think* it is cheap, or get their supply at a fixed price, as is generally often the case with municipalized water, they will use more, and that is good for them. Moreover, for light, a municipality is sure of at least one very valuable customer—namely itself. Some Continental cities use nearly quarter of what is made, but that looks as if the people did not use as much privately as the English, or even our people, do.

393 (g) Elec-
tricity.

As to electricity, no existing state of affairs had to be disturbed to municipalize it: so our people have municipalized it much more generally than gas. Yet the results are doubtful.

Duluth claims to have saved its people in seven years \$631,000 in reductions of rates on water and gas, and to have accumulated and invested in extending the systems, \$121,000.

Detroit claims that in the ten years ending with June, 1895, she lit her streets at \$1 less per arc light per year than Buffalo, and paid out of profits for a million-dollar plant.

Logansport, Indiana, claims to have provided the people with good electric light at a moderate price since 1894, to have had all city lighting in streets and public buildings free, and to have paid out of proceeds \$100,000 for increase of plant.

Jacksonville, Fla., claims to have, during about eleven years preceding 1906, reduced prices of electricity to citizens, 75 per cent., and paid out of profits for \$365,000 worth of plant, plus interest on such bonds as were issued at the start.

On the other hand, after trying the municipal electric street-lighting plant for eighteen years, the people of Easton, Pa., are demanding that the city councils abandon it and procure lighting from the private corporation. Mayor March, who advocates municipal ownership when it can give efficient service, has declared that the condition of the streets of the city through defective lighting is dangerous from a police point of view and unbearable from the point of view of the citizen, and favors private service.

Offers have been made by private corporations at \$15 a year less per lamp than it now costs the city for the service which is causing constant complaint. It is estimated that the city has thrown away for several years from \$4,000 to \$5,000 a year in maintaining the plant.

Mayor March says: "If we intend to continue lighting the city by our own plant, we must run the plant as a private corporation would run it, not only with

economy, but also by constantly repairing and renewing the machinery to keep up its efficiency. This has not been done. I feel that public opinion will insist upon the streets being lighted by a private company because the public, as well as I, believe it can be done for far less expense than it is being done by the city."

Select Councilman David W. Nevin says: "In my opinion the operation of municipal plants amounts merely to the creation of a number of places to be filled by local politicians. These men get salaries, but have no interest in the plants as long as they continue their 'pulls' and hold their jobs."

That same Mayor Head of Nashville whose experience with the city railroads was given, proved again in relation to light what municipal regulation without even ownership, may accomplish. By judicious work in the legislature he got the gas company to reduce its price from \$1.50 per thousand feet to \$1, and its stock has risen from ninety cents to a dollar and a quarter.

He says * that when he began building a municipal electric plant, the existing company reduced its rates from eighteen cents to twelve, and made many contracts at six. He ultimately took over the street-lighting from them, and did it the first year twice as freely as they had the preceding year, at a cost of \$33,500, as against their charge of \$49,270.

In 1901 the aldermen of Worcester, Mass., found that in all the cities from which they could get reliable data, the cost of electricity from municipal plants averaged 3.4 cents per lamp-hour, while Worcester was paying a private corporation 2.8.

In 1906, Alexandria, Va., sold for \$3000 an electric plant which had cost \$17,000, four Indiana cities were looking for customers for theirs, and Cleveland had voted against Mayor Tom Johnson's recommendation to make one. On the other hand, many American cities were claiming success for municipal electric-lighting

* Proceedings of National Municipal League, 1906.

plants, whether with better warrant than Richmond's long claims for her gas-plant, time will show.

Great Britain leads even Germany in municipal electric lighting, possibly being quicker to seize novelties; and Germany has more electric plants run by private corporations, than gas-plants: possibly because the capitalists are quicker than the government.

393 (h). Electricity versus gas. But not everybody uses electricity: so far, not nearly as many as burn gas. The justification, then, for municipalizing it is not nearly so obvious. But it is incomparably the best street light, and economizes police expenses, and prevents crime: the electric light has rendered many a street safe which great police care failed to. Municipalizing for street purposes would, then, perhaps be justifiable as a police measure, and possibly private supply may as well go along with street supply.

393 (i). Major Darwin on utilities already treated. As bearing on the conveniences thus far considered, and one—housing the poor, to be considered later (431 ff.), a table in Major Leonard Darwin's "Municipal Trade" (London, 1903) shows that from March 31, 1893, to March 31, 1902, municipal waterworks, gasworks, tramways, markets and some minor undertakings have been conducted at apparent profits, while electric works, bath-and wash-houses, burial-grounds, working-class dwellings, harbors, piers, docks and quays, have been conducted at apparent losses. But he does not consider the figures entirely reliable, and his general attitude is one which American experience confirms—that the tendency of the bookkeeping is, very naturally, to throw doubtful points in favor of profit.

394. Telephone. There has been a good deal of discussion lately over municipalizing the telephone. Perhaps we can sum up most of what we have been learning regarding government operation in connection with that subject. After paying for telephones in five buildings in four cities, I find it apparently the hardest

business to manage decently, of which I have knowledge. How, then, about the fitness of the governments to undertake it. It is doubtful whether its real usefulness is wide enough to strongly justify government being burdened with it? But there is no doubt that it is essentially a monopoly: for competition seems next to impossible, because every user wants to reach every other user, and the service would be almost useless if split up among several companies. Therefore if government ever becomes fit to control this most difficult of conveniences, the telephone might properly be among the first undertaken.

Now as long as there is private competition in water, gas and electric conduits of all kinds, it is a great nuisance to doubly or trebly tear up the streets to enable several companies to construct and repair their conduits, and it not only is ugly and obstructive to travel, but it *spreads malaria*. It is too late to effect all the economies that were once possible, by combining into a trust all the companies dealing in any one of the commodities, as now is frequently done with new ones, because the competing companies have already torn many towns to pieces, and wasted a great deal of money in duplicating each other's works. But any trust that may be made, need not continue using all the pipes, and tearing up to keep them in repair; but if it does not use all, it would have to tear up for new connections to replace the discarded ones; and so far as it does not use all, there would have been just that much waste.

For gas and water both (not to speak of sewerage, electricity and pneumatic tubes) there is everywhere a most painful need for a central combination to put all the conduits in each street into one good tunnel, abundantly large and convenient, where they could be placed as needed, and taken out and repaired without the inconvenience, waste and sickness always due to disturbing the streets. Some of the London underground

railway tunnels carry pipes and are, on the whole, successful in it. Paris has a pipe system in some of its sewers. It is not as complete as it might be, but very admirable as far as it goes. Paris puts the gas-pipes and electric wires under the sidewalks instead of the roadway. Milan in its splendid new Via Dante has galleries under the sidewalks and right by the houses, for everything except the sewerage: that goes under the roadway as usual. New York has lately built a few "pipe galleries" in connection with the subway railroads, but of course not as many as there ought to have been, and the specifications for the new subways require them throughout.

As the concert of action necessary for pipe galleries cannot be had from half a dozen independent companies squabbling over each of the conveniences, pipe-gallery or tunnel companies may be chartered, but by the time a city needs them, the then existing gas and water companies would fight against moving their own pipes: so after all, the only way to get the best results would seem to be for the city to own all the interests (it need not *operate* any) or at least the tunnels or galleries, and compel their use. For the government to take the whole lot by eminent domain, and fix them up right, once for all, would certainly be the best solution—for any government fit to do it without the frightful waste and corruption of most government work in American cities. Tunnels would probably cost American tax-payers many times what they ought to, but they might be worth having at the price, or for reasons of health, at almost any price.

Most American cities let companies use their streets for pipes and wires without paying for the privilege; most European cities get large revenues from them: so probably, without municipalizing so far as to have the cities do the work of the companies, it might be well to make municipal tunnels, and charge the companies for the use of them.

Kansas City gets ten cents per foot per year for the privilege of laying down conduits for wires.

396. Advertising signs. One very novel and useful source of revenue, in Berlin, comes from regulating advertising signs. The city keeps them in good taste, and gets seventy thousand dollars a year for the privileges of them. Of course such a proceeding is still far beyond our political capacity.

397. Summary. Professor Daniels ("Public Finance", Edition of 1899, pp. 277-9) admirably summarizes conclusions on the topics of this chapter as below. Up to 1907 the aspects of the case are not materially changed, tho farther developed, as we shall see in the next chapter.

"A careful sifting of the evidence presented on both sides seems to establish the following conclusions as highly probable: (1) The price charged by private companies for the supply of water exceeds by twenty-five to forty-three per cent. the price charged by municipal waterworks; (2) the cost of the water-supply by municipalities probably exceeds the cost incurred by private companies, tho how far the increased cost augments general taxes it is difficult to say; (3) while the price of gas in England under both systems is markedly less than the price of gas under either system in the United States, the rate of reduction in gas prices in the United States since 1870 seems to have been more rapid than in England; (4) the cost of producing gas has probably been less under private than under public management. . . . It is practically certain that municipalities have paid more than private companies for labor both in England and in the United States. 'This failing', says Professor Bemis naively, 'if it be a failing, is quite common in public works. Many consider it an advantage for public works thus to set the example of good wages.' Our complacency on this score might perhaps be just if the example set by our public works were uniformly an example of good wages for good work. When, as is so common, the practice of our public works amounts to high pay for the inefficient service of party hacks, the 'advantage' of such a policy is more than dubious. (5) The price charged for gas by public companies in England appears to be less by seven or eight per cent. than the charge made by private companies, but no such general assertion can be made with respect to the United States; (6) public electric-light plants in this country cannot be said generally to furnish electricity at a lower cost or price than private companies. The evidence rather tends to show that the advantage lies with private companies, especially as long as electrical apparatus is

evidently in the transitional stage. (7) Local transportation has been undertaken by several British municipalities with varying success. In this country it is as yet untried. When all circumstances are taken into consideration it would appear that our transportation service is not only immeasurably more efficient than the British tramway service, but that the charges for distance traversed are really less in the United States than upon the most successful of municipal lines in Great Britain."

CHAPTER XXX.

LATEST ASPECTS OF GOVERNMENT OPERATION.

Most of the preceding treatment of the problems of municipalization was written in 1900, tho I have tried to bring its details up to date. As to general conclusions, those of Professor Daniels were stated in 1899. These words are written late in 1906. On searching for evidence of what has happened during the intervening time, I have been surprised to find how scant and conflicting it is. Two things are plain—the efflorescence of municipalization up to 1890 has met with a serious blight; and the testimony on the subject is

colored by that difference between men
398. Platonists and Aristotelians. which bears the names of Plato and Aristotle, but which began long before them.

The idealists find municipalization triumphant; the men of facts find no sufficient evidence that it is.

In Great Britain, the advocates of municipal operation say that the statistics abundantly prove its success. The opponents say that they do not. Professor Daniels doubts whether "any real financial profit whatever has 399. Major Darwin emerged to 1903." Major Darwin * thinks that "the net result to the nation will be neither a considerable financial loss nor a considerable financial gain". The report of the Parliamentary Committee already alluded to shows little confidence in the statistics either way, saying: "The auditors are not accountants,

* *Op. cit.* The most detailed work yet given to the subject.

and are not, in the opinion of the committee, properly qualified to discharge the duties which should devolve upon them." Major Darwin supports most of the convictions already set forth.

"In the United States . . . the balance of advantages and disadvantages tells heavily against Municipal Trade. . . . In England, Municipal Trade is more likely than private enterprise to introduce corruption. . . . As regards gasworks, the results have been shown to be faulty. . . . No material gain or loss has directly resulted from Municipal Trade, altho taxation is now being increased thereby. . . . The arguments are telling strongly against Municipal House-building. . . . Local authorities are advancing too rapidly in the paths of Municipal Trade."

He agrees with Lord Avebury's opinion that so far

"There can indeed be little doubt that there are fewer workmen's dwellings now than there would have been if the municipalities had not built any. . . . As regards house operations, a particularly strong case can be made against this work being largely entrusted to municipal employees"; that it would "be most unwise to base our policy for the future on the hope of any financial benefits to either consumers or ratepayers from Municipal Trade"; that "as regards ordinary competitive trades, the case for municipal trade in fact breaks down utterly"; that "the logical thing to do would be to establish a separate elected body for the management of such enterprises, the number of votes to be given by each voter being solely based on the amount of the rates paid by him" (an approach to the recommendations of the Tilden Commission in New York), and that "Local Authorities in England . . . have gone too far in certain directions in their acceptance of socialist ideas." He quotes John Stuart Mill to the effect that "the reasons in favor of leaving to voluntary associations all such things as they are competent to perform, would exist in equal strength if it were certain that the work itself would be as well or better done by public officers", the reasons being "the mischief of overloading the chief functionaries of government with demands on their attention, and diverting them from duties which they alone can discharge, to objects which can be sufficiently well attained without them; the danger of unnecessarily swelling the direct power and direct influence of government, . . . and the inexpediency of concentrating in a dominant bureaucracy all the skill and experience in the management of large interests, and all the power of organized action existing in the community; a practice which keeps the citizen in a relation to the government like that of children to their guardians, and is a main cause

of the inferior capacity for political life which has hitherto characterized the over-governed countries of the Continent."

400. Municipal operation, retarding development. The very latest contributor of British experience is Professor Hugo R. Meyer.*

His thesis is that municipal operation retards and limits the supplying of facilities, in fact often prevents them. This he illustrates by the general facts that Great Britain, where that system exists much more widely than with us, has proportionally about one-quarter the street-railway facilities, one-third the electric-lighting facilities, and less than one-quarter the telephone facilities that are enjoyed in the United States, where these matters have been left to private initiative. Glasgow, the banner city of municipal railways, has, in proportion to population, but one-third the facilities of Boston, and, distance being considered (only relatively, Glasgow has no distance, the roads not going far from the center), the fares are, in labor cost, much higher than those of Boston. In consequence of the backwardness of these industries, Professor Meyer claims, 120,000 British people have missed opportunities of employment, and been forced to emigration or unemployment; and that so far as electric machinery is concerned, England has lost her old place as one of the world's chief sources of supply for mechanical apparatus.

Professor Meyer seems to prove that the facts (of which there can be no question) result from the cause to which he attributes them. The most obvious and incontrovertible of his arguments is that a city owning a plant for any purpose, must *attack itself* to introduce a new one or a substitute; while, if a plant is owned by a private company, a competing company feels no tenderness for it. Private companies not only find in competition their very reason for existence, but are notoriously readier than government bodies to adopt improvements: the Boston Elevated Railway Company, according to

* "Municipal Ownership in Great Britain" (1906), a work to which I am greatly indebted.

Professor Meyer, "scrapped" four equipments of motors in twelve years. The effect of this consideration in making the British cities owning gas-plants, oppose the introduction of electricity, is shown in the figures already given. Another obvious consideration is of course the comparative slowness of all government operations, as compared with those impelled by self-interest. Mr. Farrar, for nearly twenty years Secretary of the Board of Trade (quoted by Professor Meyer), said in 1883:

"All experience shows that whilst capital will always . . . support a new invention, if there is prospect of success, there is no such active motive power on the part of governing bodies; they take up a thing when it is done, but they are not persons generally willing, nor perhaps are they the best persons, to take up a new invention."

400 (a). *Dogs in
the manger.*

The claim that leaving government to supply facilities, often means not supplying them at all, is proved by many instances where municipalities have obtained from Parliament (which in such matters virtually performs the functions of our state governments) powers to do all sorts of things, in order to keep private companies from doing them, and have not done them at all. When a municipality has parliamentary sanction to undertake a matter of the kind, no other agency can do it within the limits. In October '99 over a hundred local governments which had obtained such sanctions were not using them, and of course not permitting anybody else to do the service.

Professor Meyer also cites several instances of the Association of Municipal Corporations and the Association of Urban District Councils, blocking schemes for supplying large territory with light and power at the low rates possible only to large operations, because of fear that the companies would underbid the municipalities. Yet in several cases the districts thus deprived of cheap supply, contained municipalities which had no supply at all. A striking instance (I forget whether I found it

*400 (b). English
municipalization
obstructive.*

in Meyer) is the killing by the municipalities of a private scheme to light some thirteen hundred square miles very cheaply from the coal-fields, while of the whole thirteen hundred square miles, under four square miles were lighted by the municipalities themselves. This recalls what we have seen of townships obstructing American through roads (384 c). These associations were even including in the tax-bills, the expenses of agitating to deprive the taxpayers of the benefit of competition. The attitude of the municipal governments regarding all private initiative, is like the jealous opposition of the ignorant classes to "capital" and "corporations". For example, in 1905, Bethnal Green, a London borough of 130,000 inhabitants, had no light. Its representative in Parliament did not want it "at the mercy of a dividend-earning company", as it was "notorious that the United States" municipalities were. In the House

*400 (c). Stran-
gling private
enterprise.*

of Commons in 1900, Mr. Macdona said: "There is a feeling in the country that the municipalities are organizing themselves into a gigantic monopoly with a view to strangling private enterprise." Aldermen Bussey of Poplar (169,000 inhabitants) said before a committee of the House of Lords in 1905, that his town "would not take current from a company at a lower rate than the town could supply it", tho the company offered it at a third less. In this debate, so eminent a man as John Burns contributed the specimen of Labor logic that cheapening the current would increase the number of the unemployed.

When existing companies go to Parliament for renewed charters, or for increased facilities of any kind, the municipalities often oppose power to increase capital to extend tracks or conduits, and thus force the companies to sell out to them cheap; and then for the private policy of expansion, comes the municipal policy of sitting still. Professor Meyer quotes Mr. Leigh, counsel to the Speaker and chairman of Committees of the House of Commons, as saying in 1900:

"Municipalities never invented or initiated anything, either with regard to tramways or gas or electric lighting, and yet when a company has become flourishing, they have been rather forced in a corner to sell their undertaking. . . . [The municipalities] have not come in for the purpose of helping . . . when a gas undertaking has been badly carried on, but they have pounced upon gas companies when they were paying their full dividend."

It is not surprising, then, that Professor Meyer has to admit that "in the year 1898-99 all but 48 of the 222 municipal gas-plants of the United Kingdom paid the interest and sinking-fund payments properly charged against them". He repeats the well-known fact that the alleged low rates of the British city railways are only for narrow centers and narrow zones around them, and calls attention to the consideration that municipalities, with the universally recognized inertness of such bodies, are very slow to extend their lines, and thus leave a frightful degree of overcrowding in cities of a grade that, with us, are not overcrowded appreciably.

400 (d). *Fran-*
chises too short.

The leading obstruction to private initiative has been a too eager demand for municipal ownership. The law of 1882 denied electric-light companies sure possession of their plants for more than sixteen years, at the end of which time the municipalities had the privilege of buying. This of course made enterprisers very slow to risk furnishing the facilities. The slow development under such a system led to a new law in 1888 postponing the privilege of purchase to the end of forty-two years. Each bill allowed for shorter terms under special circumstances. Tramway companies were similarly hampered by too great eagerness for municipal ownership, purchasing privileges varying from fourteen to forty-two years. Permission for cable power was at first given only for periods of seven years. All were farther hampered by sundry restrictions of detail.

I wrote, some pages back, that virtually nobody opposes municipal *ownership*, but I had not then read

Professor Meyer's book, and learned that these exaggerated efforts to apply the principle had made him an opponent of it root and branch; but apparently municipal ownership in Great Britain practically means municipal *operation*, and the trouble begins there. There are very few good principles where too eager enthusiasm cannot be as harmful as absolute neglect.

The result of the British policy was that in 1888 there were two electric-lighting plants at work in England; in Germany, under an unduly grasping policy of municipal ownership like that of England, there were fifteen; in the United States there were five hundred and seventy-four. When, in 1888, the privilege of compulsory purchase by the municipality was limited in England to forty-two years, private companies began work at once, and were very largely bought out by municipalities on mutually satisfactory terms. Yet with all the municipal operation, the light is not yet in nearly as large a proportion of places, or used by nearly as large a proportion of people, as in the United States.

The British policy regarding the telephone has been the same as regarding tramways and light. The government deliberately paralyzed the telephone in its earlier years, to protect the government-owned telegraph, just as the municipalities paralyzed electric lighting to protect their gas-plants. The result is a proportional use of the telephone not over a fourth that in the United States.

The associations of municipal governments have great power in Parliament, and block nearly all efforts of private initiative. With the greater openness of our legislatures to politics, the conditions here, with municipalities widely operating the franchises, would be worse.

The matter is eating out the old purity of English municipal government, and reducing it toward the level of ours. The number of laborers in municipal employ

400 (h). English municipalization dangerous to the purity of government.

has of course been enormously increased by the municipal tramways, electric companies, gas companies, etc. These laborers, like ours, are casting solid votes for the administration in power, while the administration is open to the corruptions which big salary lists have injected into our own politics * (388 m). Local politics mans public works by favoritism. The Lord Provost of Edinburgh said to the correspondent of the Chicago *Tribune* (I am still following Professor Meyer): "So long as the road is under municipal management, there is always a temptation to provide employment in some way for political hangers-on. . . ."

Professor Meyer quotes several eminent Britons to the effect that the employees of the various municipal plants are already exercising a dangerous influence in politics. Some publicists propose that they shall be disfranchised,

* I am largely indebted for English experience to an important letter from Mr. Robert P. Porter in the *New York Times* for October 31, 1899, and to a friend from Glasgow whose family has furnished the city at least one provost, and who tells me that objection to municipal trading is rapidly growing, because of the corruption it breeds. The latter sends a copy of the *Glasgow Herald* which says: "The citizens of Glasgow may again congratulate themselves upon having had a narrow escape. By 28 votes to 17, they have been saved from embarking on the perilous enterprise of Municipal Banking." He also writes, September 8, 1900: "Our rulers are emulous to become bankers as well as purveyors of water, light, power, telephones and much else, and owners of a tramway system. There is a growing sense of danger in Glasgow, due to rapidly increasing taxation occasioned by the enterprise of our city fathers. Two-pence on the pound of rental has just been added to the rates, and with increasing municipal liabilities there is prospect of further rise. Meantime our streets are badly paved, and are like to remain so as long as our rulers find they can gain greater distinction by proposing banking schemes than by attending to the streets. The lighting of the city is also not good. Lighting costs money and does not bring glory." The "glory" sought for by the "city father", seems to be rapidly becoming simply the glory of voting conveniences to the proletariat at the expense of producers.

The side against municipal trading was also presented by Lord Avebury in the *Contemporary Review* for July, 1900. He was answered by Mr. Robert Donald in the next number.

on the same ground that regular soldiers are disfranchised in most countries civilized enough to have a suffrage. Whether the municipal employees will be worse than our exploiters of franchises, remains to be seen. But we at least get the facilities to a degree that Great Britain is not within sight of.

Professor Meyer claims that municipal plant generally costs more to build than private plant. Some other observers claim differently. That municipal wages tend to surpass others, is matter of notoriety, even in the United States.

Professor Meyer wisely concludes that

400 (1). Leaves out the able man. "Industrial progress comes not from the people at large, whether acting as individuals

It comes solely from a comparatively small body of men of unusual imagination, daring, power of persuasion and executive ability. Those men see, or believe they see, possibilities of development and new ways of doing things, where the average man sees naught but the possibility of failure. They have the courage of their convictions, as well as the power to infuse that courage into others—the possessors of the capital without which no new idea and no invention can be tested and developed. Finally, the men in question have executive ability, which is the power to plan, and the ability to select the men who can be trusted with the execution of their plans."

From the chaos of statistics regarding municipal trading in Great Britain, two facts stand out in unquestioned clearness. Taxation and debt have enormously increased. Advocates claim that assets have been gained to offset the debt, and advantages to offset the taxation. Many judges of high and passionless authority deny both statements, and there is much evidence that while assets are carried in the accounts at cost, they have been permitted to deteriorate into comparative ineffectiveness.

400 (2). Reversal of English sentiment. The English elections of 1906 and 1907 were overwhelmingly against municipalization.

After this book was in proof, there appeared Mr. Robert P. Porter's "Dangers of Municipal Ownership". It deals mainly with Great Britain, and reinforces with much interesting and instructive detail, the argument of Professor Meyer. It also makes a very important and, so far as I know, new contribution to

401. *Russia and Socialism.*

the discussion, in a demonstration that Russia, the most backward of the European nations (perhaps excepting Turkey), is the most forward in socialism—that the corrupt bureaucracy which is chaining Russia in her backward and tragic position, is simply made up of the politicians who are controlling, socialist fashion, a large part of the industries which, in progressive countries, are left to private initiative and competition.

Against this consideration it may be urged that the bureaucracy of Russia is based on hereditary privilege, and that a bureaucracy based on universal suffrage would not be open to the same objections. If universal suffrage has not provided equally bad bureaucracies in New York, Philadelphia and Chicago, the difference is not great enough to upset the argument.

I should be glad, if space and other circumstances justified, to give the reader many citations from Mr. Porter's work, but they are not absolutely essential to the discussion as already laid down, tho an examination of the work itself will amply repay the trouble. At the rate facts and arguments regarding many of the civic relations have been accumulating in recent years, nothing but the daily newspapers can keep up with them. Books, however, can give fundamental principles and general tendencies more effectively than the more ephemeral publications can.

402. *Australasian experience.*

The experience of Australasia * is interesting and instructive. But Dr. Clark says it is less instructive than the European. Yet a summary of his statement of it may be yielded in

* These points on Australasia are mainly condensed from Clark, *op. cit.*

deference to those who think otherwise, as well as to its distinctive interest.

403. Conditions unprecedentedly favorable. Those colonies inherited from the mother country a highly developed civil service, and themselves evolved even a more centralized government. Most of the large share of local services performed in America by unsalaried officers, is performed in Australasia by permanent civil employees who hold their places for life. Thus the country was in a position for handling government industries, far in advance of ours.

Australasia was the first great civilized country to come into being after the railway and the telegraph were in use, and it was therefore very natural for her governments to build and operate them, as it was natural for earlier governments to build common roads. Moreover, Australasian governments could borrow money in London to do this, cheaper than native individual capitalists could. The people did not want London syndicates exploiting the country, and all this pointed to government doing the work instead of private enterprise. This, however, has not prevented much similar work by private enterprise since, in face of the fact that the government was first in the field—a suggestive symptom of the oft-proved superiority of private management to government management, at least so far as concerns economy, energy and efficiency. Another symptom is the fact that nearly all the government railroads

404. Government railroads run at a loss. are run at the expense of the taxpayers, at the rate of \$66,000,000 for the decade 1894-1904, not to speak of \$40,000,000

taxes that could have been expected from private lines in the same period, if paid at American rates. Says Dr. Clark:

"Private railways thrive in the shadow of preponderating government systems. Private and public street railways are operated harmoniously in the same cities, or in neighboring towns and states, and neither drives the other from the field."

The government rate in Australasia is three cents a

405. Taxes highest among civilized peoples.]

mile for long rides on railroads, as against our two cents; and there is an annual expense for government in New Zealand of \$38 per capita as against \$21 in the United Kingdom, \$18 in France, \$10 in Germany and \$8 in the United States.*

406. Vice of statistics.

And yet this is an excellent place to warn the young student with an illustration against the characteristic vice of statistics—they generally can state but one fact, while the real situation consists of many; and to get at the whole truth, many statistics should be combined. This of course is done in many of the tables. But so far as I have examined, I find no serious effort to make a comparison of the *total* cost of government per capita in various countries. The figures I have given are only for the national governments, and it is plain that the expenses of the national government in the United States do not cover many matters that are attended to by other civilized national governments, but here are attended to by the state governments. Probably there is no great nation which leaves so large a part of its activities to its subdivisions, unless it be Germany; and, suggestively enough, in the cases cited, Germany, despite her great military and (recently) naval expenses, appears next in economy to the United States. New Zealand, on the other hand, being a colony, is exempt from many of the usual items of national expenditure, tho probably subjected to much that is with us borne by the separate states. And yet—and as again illustrating the complexities apt to be hidden under very simple figures—in the United States, the expenses of the state governments are so small as compared with those of the national and local governments, that they do not affect the matter much, after all; while in England, and probably in Australasia, the general government bears many expenses—for instance, some connected with education

* Reports of speeches of Sir Joseph Ward, Premier of New Zealand, in the United States in June and July, 1906.

and the constabulary—that here are borne by the local governments.

The reader will then probably conclude, as the writer long since did, that the value of statistics is qualitative rather than quantitative—that tho they generally show tendencies, they seldom give their actual force.

407. Telephones and coal-mines at a loss. The public telegraphs and telephones do not pay interest on the investment in a loss.

Australia, though they have recently done so in New Zealand. But the rates are lower than in the United States. New Zealand operates two government coal-mines which are new experiments and ran \$10,000 behind on their interest account in 1905.

Yet notwithstanding the deficits on Australasian public enterprises, the confidence of capital in the resources of the country is such that, as already said, the government can borrow at good rates, which have, on the whole, been growing more favorable.

408. Government success in money-lending. The Australasian government being the great landlord, and being able to borrow money better than anybody else there, promoted settlement not only by building railroads and telegraphs through its lands, but also by loaning to settlers money for improvements. This experiment, tho of no direct financial interest to us, is worth recounting as a remarkable object lesson against the vulgar impression that trading results only in good to one party, and that of course the sharper party. The governments lend the settlers money for land and improvements, and so benefit them; the governments borrow the same money from the British bankers, pay them remunerative interest, and so benefit them; and the governments make a margin of about one per cent. between what they pay and what they receive, and so benefit themselves.

"The prevailing rate of interest on real-estate mortgages fell from seven to five per cent.—or the level of the government rate—during the first ten years the law [for government loans to landholders] was in operation. Bankers in New Zealand

interviewed as to the effect of the law, spoke of its results without disfavor, seeming to think that it might have stimulated business. . . . Private banks and savings institutions are able to place their funds securely and profitably in spite of government competition."

409. Life Insurance.

"There has been no exigent demand for state life insurance, or the system would surely have extended beyond New Zealand during the thirty-six years it has been in existence in that colony. South Australia, with a state commission and export department, has also one of the largest coöperative farmers' commission companies in the Commonwealth, which does a business for its members five times as great as that done by the government, tho in more varied lines."

Dr. Clark sums up his views:

410. Conclusions negative.

"A conclusion reached by an outsider as to the utility of government ownership, from the experience of Australasia, must be so largely qualified as to be almost negative. Public railways, telegraphs and land banks have succeeded. [The author must mean succeeded in pleasing the majority—especially the non-tax-payers: for he himself shows how they have not succeeded financially.] . . . An outside observer, unless a faddist on government ownership, would probably come away from Australasia with a feeling that, after all, this issue is less important—as affecting the social and economic welfare of the people—than those who theoretically discuss the subject suppose. Government ownership does not bankrupt the state, deaden private enterprise, and kill prosperity; neither does it bring a nation into an industrial millennium with a bump."

411. Laborers demoralized.

"The average wage-earner . . . in exchanging private for state employment sacrifices no individual freedom. Independent or self-employed workers, on the other hand, usually have property interests that make them averse to social changes; and they have something that they probably value still more, . . . that is, their power of self-direction. . . . A man who has been his own boss . . . resents the restraint of official supervision. This sentiment is widely diffused among the more prosperous working people of Australasia. The experience of democracy, in Australasia as well as America, goes to show that the personal interest of a public captain of industry would lie in conciliating his employees, at the expense if necessary of the whole body of citizens. . . . As a natural consequence of this, the investigating commissions of Parliament have found that public arc more expensive than corresponding private undertakings, and that men do not work as well for the state as for private employers."

Nothing illustrates the last fact more significantly than that the usual term among Australasians for an easy-going pace of working is 'the government stroke'."

412. Some fallacies. Among Mr. Reeves's arguments* for enlarging the functions of the state is: "Mistakes may be made, but we can restrain the state. Trusts and combines we might not be able to control." It would be interesting to poll the citizens of New York, Philadelphia and Chicago, and a good many other places, on this question. But as to the state, it is the incontestable fact that it is possible in a single day (tho only after a hard-fought campaign) to "turn the rascals out". But it is equally incontestable that they have always got back again. One is tempted to believe that in a given state of human nature, one method, in the long run, does about as well as another, and that the only advance that can be made permanent is in human nature itself. But this skepticism regarding methods should be guarded against. Because of some defect of detail, the best methods often fail when first tried; but something is learned at each attempt, even be it no more than what to avoid in future.

Another equally striking and equally questionable remark of Mr. Reeves is that "newspapers criticise the public service in a way which they will not or dare not criticise private enterprise. State management, therefore, carries with it the great guarantee of publicity." With this statement, compare the notorious difficulty of getting correct accounts of state enterprises, from Australia or anywhere else.

413. The latest American experience. Notwithstanding that the American experience of government operation is comparatively trifling, it has already been abandoned in several cases in addition to those already given. In 1905, the city of Omaha for the 413 (a). Omaha. first time in sixteen years, elected a Democratic administration, because the Democrats promised

* *Op. cit.*

municipal operation. A special letter to the *New York Times* thus related the experience:

"The Democrats promised municipal ownership of just about all the public utilities, even down to advocating that the city own the railroad switch-tracks in the wholesale districts and rent these tracks to the different railroads. . . . Omaha went wild over the idea. . . . After the election the cost . . . began to be counted. The Board of Engineers . . . made a report that just doubled the price the city was willing to pay for the water system, and the water company went into court to compel the city to pay. . . . When the taxpayers saw that they would be compelled to pay more than \$6,000,000 for property which they had expected to get for \$3,000,000 there was a howl from them."

"Immediately afterward it was found that the fund on which the municipal asphalt plant was expected to keep running all the summer was exhausted in July. . . . Then the city market-house scandal opened up afresh. This was the first effort of Omaha to go into municipal-ownership business. . . .

"A big house was erected on one of the principal streets at a cost of \$12,000, altho almost any contractor in the city would duplicate the building for \$5,000. Then the Council made stringent laws forcing the commission men to move into the market-house. Two of them did so. . . . The others ignored the order. After a month or so the two . . . moved out and the doors were closed."

"And so, between the market-house scandal, the asphalt works, the three-million-dollar overcharge in the waterworks plant, and the failure of the City Council to take any steps to rescue the city from the muddle it has gotten into, taxpayers are afraid of indulging any further in municipal-ownership ideas."

So far as American experience goes, the last important testimony was gathered and discussed at the meeting of the Political Science Association in Baltimore, December 26 to 29, 1895.* The discussion was of "The Case for Municipal Ownership", but Operation was certainly meant, as there had not then developed any serious opinion against Ownership. The proponent of "the case for" announced its triumphant success in America, 413 (b), *A weak showing.* but cited in evidence only the electric-lighting plants of Detroit, Chicago and Allegheny; sundry markets and docks which require vir-

* These reports, made as listener, I have checked from the "Proceedings".

tually no "operation", and where, in the nature of the case, private operation is virtually unknown; the Cincinnati Southern Railway, which is not municipally operated at all, but leased to a private corporation; and the water-plants of some half-dozen cities where water runs down hill under municipal supervision (some of them, cities like New York and Boston, being cases where water has been acting that way, undisturbed by these new questions of municipal operation, for over fifty years). The failures and wastes were not embraced in his schedule.

Then he proceeded to show, very correctly, that the strong men of the cities now control them through the public-service corporations; and to prove conclusively that if there were no public-service corporations, the strong men would not control the cities through them. He omitted, however, to prove that if the strong men did not control in that way, they would not control at all. So far as experience has been accumulated, they always have controlled; and so far as the future can be judged from the past, they always will control, until there shall be so much advance in the strength of weaker men that all men will be strong, and democracy will be a *fact* as well as a name. At present, however, the weaker men are not paying much attention to developing their strength, but are absorbed in schemes for massing what strength they have, to get more conveniences at the expense of those who are already stronger.

The same speaker at the Baltimore meeting brought up as an argument for municipal operation, the demonstrated and established argument against it—that "monopoly is always indolent". Apparently he failed to realize that there can be no other monopoly as nearly impregnable as a government monopoly. He claimed that the destruction of private operation would be the destruction of privilege. Apparently he had never heard of Tammany Hall or the privileges enjoyed by Tweed

and Croker and their fellows, even with municipal operation of *all* the franchises far beyond their grasp.

He made a number of other claims which, like the claims generally made for extension of government functions, rest on about equally strong foundations with those cited. He even supported his contentions by the statement that "transit, light and water . . . next to rent . . . are the heaviest item in the domestic budget".

When the "Case for Municipal Ownership" (Operation was meant all the time) is thus put before the representative Political Science Association of America, farther discussion hardly seems called for.

In answering the proponent so fully cited, Professor Daniels said that the statistics so far gathered—in the report of the American Commissioner of Labor (1899) and in the Census Bulletins for 1890—do not "settle even remotely the disputed question"; that governments do not pay salaries to attract the best talent away from private corporations; and that he thinks that the solution of the whole topic lies in reforming politics before giving over franchises to political operation; and in the meantime, having the ownership of them retained by the cities, and the operation leased to private enterprise, for either fixed sums or percentages of receipts or profits.

413 (e). Our private Initiative better than Europe's. Professor Rowe called attention to the surprise foreigners feel at the enterprise, initiative and liberality for improved methods, of our public-service corporations; which indicates that those of Europe leave more room to desire government operation than ours do.

Several other speakers followed with a quite general agreement that municipal officers are tempted to make dangerously favorable showings for municipal operations, by allowing too little for repair and renewal; that European experience is immature and uncertain, American experience vastly more so, and European conditions too different from American to afford any guidance.

413 (f). Democracy on trial. The proponent for Municipal Operation did make one statement in various forms, which is incontrovertible, and which justifies a little emphasis. He said: "The question is not so much, Do we believe in municipal ownership?" (Operation.) "The question is: Do we believe in democracy?" That is it exactly, and well, stated. It would be better stated, however, as: Do we believe in democracy to the extent of municipal operation? To that question, probably the answer of the sanest students would generally be something like: So far as helping water run down hill, we do. So far as streets and sewers, we believe in democracy's ability to make, repair and clean them—very badly; but for abundant reasons, democracy may be the best available agency. So far as transit, light and the other franchises, the case is yet to be proven: where government has done them best, democracy is unknown (426, 426 c); but even there, testimony, and even experience, conflict a good deal, while in America, the only country but France where democracy plays any part in municipal affairs, there is virtually no experience at all.

The proponent for Municipal Ownership also said that it "is the struggle of democracy seeking to divorce itself from a privileged class". It is that, and more. As long as the differences in men are as great as now, the few will inevitably enjoy privileges that the many cannot know; the many are constantly striving for a larger share of what the few produce, not to speak of what some of the few filch from all. Yet beyond a moderate degree, it does the weak no good to get the things the strong have made: for they cannot handle them. To determine where that moderate degree is, regarding municipal franchises, is now matter of experiment. But municipal operation has not its relatively largest following among those who intelligently believe that, in even a moderate degree, it will be an economy, or who care anything about economy. Much its largest relative following is among those who merely look forward to ultimately getting transit, light, heat

and all other good things without paying for them; not among those who expect municipal operation to reduce their taxes, but among those who pay no taxes at all.

413 (g). Some interesting experiences.

At the same session of the Political Science Association, a distinguished member living in a Western university town said to a member living in an Eastern university town: "I'm not prepared to advocate municipal operation everywhere, but it's just the thing for us where I live: for the university runs the town."

"Yes", answered his friend, "just the thing—as long as the university runs the town. I thought so a few years ago regarding my town, but the university doesn't run the town any more: Labor has been asserting itself."

"Oh, well, we have no labor troubles."

"You will have, if you have any labor. We too had 'no labor troubles'. But the agitators heard of our deplorable condition, and sent the 'organizer' to remedy it. Since then our little town has had proportionally as many strikes and as much idleness and suspended work, as the proudest cities. But the unions have not been content with this. They wanted to go into politics: they want to rule everything now, you know, and think they can do it. Well, cheap light and free whiskey gave them a rallying-cry. They made a blacksmith mayor. He began building an electric-light plant without the assistance of the professor of electricity, and turned the professor of engineering off the board of public works, and the professors of the medical school off the board of health; and put in his friends from the ranks of 'Labor'. So you see the university no longer runs the town. Within five years, your university won't run your town. I'll take your opinion of municipal operation *then*."

Since the foregoing conversation, some other facts worth noting have taken place in the Eastern university town. Building, which was expected to be very lively

in the following spring, was very dull. Some say the unions had forced wages too high. Some say that capitalists hesitate to invest as freely in a town run by its present authorities, as they did in a town "run by the university".

In searching the mass of literature on the subject, one finds two characteristics pervading the arguments in favor of municipal operation, and a statement of those characteristics seems to sum up the situation. One ^{413 (h), Fallacious} reasoning is that the evils of the established system are enumerated, and the claim made regarding each, that the proposed system would cure it. The other is that ideal conditions are enumerated, and the claim made that the proposed system would effect them. Both claims are virtually gratuitous. There is not enough experience to support either.

One argument advanced by Professor Zueblin, leads to a point that calls for expansion. Because governments have been very ineffective in inspecting and controlling the operation of municipal utilities by private interests, he advises that they should undertake the entire management. How the honesty and capacity for entire management are to be found in organizations that cannot muster enough of those qualities for effective criticism and regulation, he does not state. But as he does state his ideal, it may be well to state a more modest, and therefore more nearly realizable, one already hinted at. It is already the fashion, when

^{413 (i), Desirability of publicity and commissions.} abuses become unbearable, to appoint more or less special commissions, such as the Interstate Commerce Commission, the Standard Oil and the Beef and Insurance Commissions to look into them and suggest remedies. Even in their spasmodic, lax and inchoate and rudimentary manifestations, all the commissions have been more or less useful, some of them very useful. But permanent commissions regarding permanent matters, like the various state railroad commissions, are

also desirable, tho too apt to lapse into innocuous desuetude. Yet the mere publicity their examinations have given to abuses, does a very great deal toward remedying them. Is it not reasonable, then, to expect and strive that these spasmodic agencies shall be greatly improved, and that from them shall be evolved permanent commissions for the constant and more skilled and more effective inspection and control of all public utilities—not only those, like the railroads, tramways and street pipes, that are, in the nature of things, monopolies; but also those, like the oil and beef industries, that under business combination have virtually grown to be monopolies?

413 (*j*). *Monopolies the ideal field of the state when practicable.*

This certainly seems the next stage in improvement, and a stage that *may* be on the way toward government operation of the franchises naturally monopolistic, and effective exaction of justice from businesses only artificially monopolistic. It is not impossible that justice can be exacted only by methods which shall keep all non-government business, like oil, coal and beef, open to competition. But there is probably more reason to hope for success regarding private enterprises, from the wider diffusion among men of ability to compete—from the rise of more men of organizing capacity, than from government regulation. There is room for both influences, and no reason why they should not work together. A third agency should not be lost sight of—many men who are not often run away with by their imaginations believe that there is a rapid increase in knowledge of civic affairs and sense of public responsibility, and hope much from them.

414. *Summary and conclusions.*

On the whole, then, the drift of experience regarding municipalization seems to be that in all matters which involve tearing up the streets, honest municipalization would probably be much better than private control, even if the control were competitive: but also, alas, that honest municipalization is generally so far out of sight in America,

that probably present evils are much less than such municipalization as we could get in most places at present.

Lecky declared that "the New York Commission of 1876 [the Commission appointed by Governor Tilden in 1875] probably understated the case when they declared that more than half of all the present city debts in the United States are the direct results of intentional and corrupt misrule". There is nothing like this in England; and yet, despite much difference of opinion, the leading authorities there do not wish farther to trust their municipalities with the conduct of such utilities as can be cared for by private enterprise.

Leaving out such matters as gas, electricity and the telephone, which are not quite natural monopolies, whether it would be wiser for the government to take all the natural monopolies under its own charge, depends, as already said, on the degree of civilization. Probably early in '99 most students would have said that Great Britain and Germany had already attained the degree of civilization necessary; but the verdict would probably be different now. In England "municipal trading" has

414 (a). English taxation increased without proportionate results. more than doubled municipal indebtedness, and nearly doubled municipal taxation, while population has only increased about

a quarter, and the municipalities have nothing to show for the debts, in proportion to their amounts, especially as plant had generally been suffered to become antiquated, instead of being kept up to the mark, as it must be kept under private competition.

Moreover, it is claimed, the people are not getting, in return for their increased taxation, conveniences at all in proportion to the increase, especially as people are paying for most of the conveniences as used, tho undoubtedly, in many cases, at lower apparent rates than those charged by the private companies, the rest being generally made up by taxation.

The effects of municipal obstruction and supineness on opportunities for capital and labor, have been made too plain to occupy us farther; but what must they be on

*414 (b). English
municipalization
obstructive, espe-
cially to inventive
talent.*

inventive talent? That is perhaps the most serious question in the whole situation. The case is plain enough in such instances as those just cited; but there is a general conviction that governmental bodies can never be expected to be on the lookout for new inventions or opportunities with the keenness forced by private competition. President Hadley says that: "Tho half the railroads and nine tenths of the telegraphs of the world are in government hands, all the large improvements of method in these lines have been made under private enterprise." As natural monopolies cannot have the benefit of competition, if they are left to municipal development, double care is needed to see that they *are* developed; but first that they are not forced to municipal development until experience and politics are more advanced than a good many enlightened people believe they generally are yet, even in England.

*414 (c). "The gov-
ernment stroke."*

As to the general character of municipal labor, before Colonel Waring came, and since Colonel Waring died, we have most of us noticed "the man with the hoe" cleaning streets under ordinary American administration, and we know the contrast between him and the laborer who is keenly watched in private competition. This is especially noticeable when New York's snow and ice is being cleaned away. So, also, are noticeable the crowds of laborers at work on trifling bits of snow and ice that might as well be left for the sun. Even in Australasia, the standard expression for slow and pottering labor is "the government stroke."

One safeguard worth considering against the dangers of municipalization, has been pretty obvious in the course of our discussion. So far as private enterprise is left free to come in when government work is shabbily done, the possibility of its coming might have some effect in holding government work up to the mark. But we have seen that one of the marked effects of municipalization in England is to shut out private enter-

prise, even from wider areas than municipalization covers. On the other hand, government work, even when the threat of private competition is desirable as a corrective of it, may often be desirable as a guard against monopolies—monopolies that even votes cannot reach, and that can defend themselves from the stimulus and restraint of competition. Private enterprise and municipal enterprise, like all human enterprise, have both their merits and their dangers. The dividing line seems to be that of natural monopoly. Where the benefit of competition cannot be had, it is mainly a question of the purity of politics whether the government would better take hold; but where private competition can be expected to give the people the usual benefit of keen enterprise and low prices, government should be kept out. It is doubtful if any large community among us is yet civilized enough to municipalize much wisely, tho from one point of view we are *over-civilized* for it: our suffrage is too advanced (426–426 c).

Municipalities do not manage such affairs as well as private corporations, because the officers of private corporations are elected only by those who have money directly at stake; while the officers of cities are largely elected by people who pay no taxes and have no money.

It is probably too late to ask why people are permitted to vote in matters where they do not have to stand the consequences. But they *are* permitted, and revolutions do not often go backwards. The only remedy that now seems practicable is to help such people get ahead so that they too will have something at stake.

We touched one argument for municipalization when we said that everybody would complain of poor water and poor postal service: some people think that if people were dependent on government for more of their conveniences, they would take more interest in government and reform it. The idea is not impossible, but it is so very

uncertain, that it will not do to trust much to it before knowing more about it. It is indeed an argument for going into municipalization, but going slow. It should be tried tentatively: for if carried to an extreme, it is simply like the older panaceas which, when analyzed, are merely disguised schemes for robbing the rich to help the poor, and are generally accompanied by the belief that if the plan were carried out to its widest extreme, some improvement in the lot of the poor would result—a belief that is generally an utter fallacy.

The argument that public utilities conducted at taxpayers' risk would lead the taxpayer to greater attention to his public duties, can appeal, in New York City for instance, to only one voter in ten: for only that proportion are taxpayers. The argument would of course carry more weight in communities where the proportion of taxpayers is larger.

The situation is a good deal like that of the mother who did not want her boy to go into the water before he knew how to swim: if she meant that he should not go in all the way—that he should wade, and not plunge where it was over his head, she was a very sensible woman.

CHAPTER XXXI.

PECULIAR AMERICAN MUNICIPAL DIFFICULTIES.

415. American municipal corruption. American municipal operation is exposed to peculiar dangers. The government of many American cities has long been among the most corrupt—quite probably the most corrupt, in the civilized world; and since the civil war, the general government of the United States has been in danger of falling into the same condition. Let us consider a bit of history which may make it easier to understand our peculiar conditions.

416. New York In New York shortly before the year **In 1870,** 1870, an enormous amount had been done in the way of public improvements. It was then found that for a long time nearly everything bought for city use, and nearly all work done on the streets, parks, aqueducts and public buildings, had been charged to the taxpayers at many times its cost, and the difference stolen by the chief officials. From what portion of the taxes was actually paid to workmen, they had been made to pay back a part to the men who employed them, as a condition of getting and keeping their places. In the same way, the persons receiving these contributions, had to pay the officials just above them, and so on up to the highest officials of all. The money so paid came out of the taxpayers, because the work was really done for only what the workmen were able actually to keep for themselves. The rest could have been saved if it had not gone into the pockets of the politicians. When the state of affairs was discovered, the govern-

ment was overthrown, a great many of the criminals fled, and the chief one, William M. Tweed, who had been the most powerful man in any city in the civilized world (unless that includes Russia), was put in prison, where he died.

416 (a). In 1894. The cure was not permanent. By 1894 things were found to be just as bad, but principally by different methods. The officials helped demagogues and sentimentalists to get a law passed enabling corrupt officials to pay the city laborers more than the same class of laborers could get elsewhere. Then the officials made the laborers hand over the difference.

416 (b). In 1898. New schemes of plunder in controlling public works, were devised in New York after the election of 1898. The department whose duty it is to regulate buildings for strength and safety against fire, was made to favor certain materials in preference to others; and the politicians and their families were found to be largely interested in the manufacture of these materials.

What would have been the situation if the same politicians had been required to build a large number of houses for the poor?

417. City works are the plums of rural as well as urban politicians.

The legislature was corrupt too. Each political party in the whole state was under the management of corrupt men who made the politics of city and state work together for their profit. The legislature shared the corruption of the city, because there is so much public work done in cities, that the possible spoils are very rich: therefore corrupt politicians in the legislature are always ready to join the corrupt politicians of the cities in seeking them. This is an added objection to increasing the number of things done by the cities.

418. The city contrasted with the nation.

The money collected by taxing municipalities, large and small, is over three quarters as much as that collected for the government of the nation as a nation, including all

civil and diplomatic officers, army, navy, lighthouses, harbor improvements, and national works of every kind. Moreover, the local taxes represent by all odds the more "swag": politics has been kept out of the navy, and until lately almost out of the army, and out of many other departments of the national government. In them, appointments have not been generally made by "pulls", but have been made with reference to fitness.

419. Contractors in office. Much plundering can easily be prevented by imposing heavy penalties on public officers who are financially interested in municipal works. Simple as this is, many people do not see the point. It is frequent for the leading contractor of a village to be an officer regulating the public works, his mechanical experience being considered worth having. The charters of some cities provide against it, but the wrong-doing officers can cover up their tracks.

420. National parties in local affairs. Under American local governments, it is specially easy for politicians to profit from public work, because the good people of localities are so ready to divide according to their national parties, that it is hard to unite them solely on questions affecting the localities. Meanwhile the bad people keep together to plunder. The good people divide from a desire to keep their party organizations active for national questions. There is no means by which the corrupt politicians (and occasional honest but stupid ones) fool the people more and plunder them more, than by leading them to carry national questions into city politics. As an illustration: between the civil war and the Spanish war, the principal national questions were between protection and free trade, and between good money and bad money. Those who supported the first of each were Republicans, the others Democrats. Now, in virtually every city, town and village in the land, when people wanted officers to

care for their streets, water, sewerage, health, police and petty courts, they selected these officers, not with reference to the work they were to do, but nominally, at least, with reference to their opinions on the tariff and on silver. Soon after the Spanish war, local officers began to be selected with reference to "imperialism".

The same things account for this ridiculous state of affairs, that account for most ridiculous states of affairs in politics—first, of course, ignorance and venality; then some defects in organization; and mainly, as is so often the case, an outgrown situation kept alive by interests that have become established under it. When our national government began, its tender and precarious life was the one absorbing object of public interest. Cities were small, and many of the things now attended to by their governments, unknown. The one object of political faith was national party, and fidelity to it was put on a par with honor and religion. This spirit is not dead yet, especially among the stupid and ignorant majority, and it is kept alive there by the party managers who find their profit in it.

Moreover, the Fathers gave us a special legacy in the Constitution itself, which helps bring the national parties into local politics. The election of United States senators

420 (a). Partly caused by method of electing U. S. Senators. by the legislatures, forces the national parties to struggle for possession of each state legislature; and therefore, as long as state and city functions are so mixed that the legislature takes a considerable part in city affairs, so long must the national parties be interested in city matters.

Once the national parties are in state politics, every question of local policy naturally gets under the wing of one national party or the other. For instance, a liquor law or a Sunday-closing law has got to be carried out by the local police and magistrates; or an idea in education—such as Bible-reading in the schools, or the prevention of truancy, has got to be carried out by the

local school superintendents. So the party taking up any one of these measures must not only control the state legislature, to get its law enacted; but to get it enforced, must control the local magistrates and police, or superintendents of education. Therefore so far as these officers are appointed by mayors or village presidents, and confirmed by city councils or village boards, so far must the parties advocating the measures, struggle for the election of those local functionaries. If all those minor local officers were state officers, and mayors and city councils had nothing to do with them, the parties advocating measures which the officers must administer; would still struggle to get the officers.

But if they were state officers, either they would be appointed by the governor: so the state parties need not run any candidate but the governor; while the mayors and city councils, etc., would run on purely local questions; or if such state officers were not appointed by the governor, they would appear only in state elections, and not in the local elections, which it is a growing custom to hold distinct from the state elections: hence they would no longer tempt the national parties into nominating and working in the local elections.

But as long as the local spoils are so rich, they will be temptation enough for the national parties, even if the other temptations were removed. But certainly the more we reduce temptations, the more we reduce the time that it will take to evolve wisdom and honesty superior to them.

When our national party managers have the impertinence to make hack nominations for local offices, sensible people sometimes make nominations of their own. But then the party bosses generally unite to defeat the non-party candidate. In the old days of party election-booths, once when there was a non-partisan ticket in the field, I myself saw Republican ballots dealt out from Democratic booths.

420 (b). Corrupts both national and local politics. The subordinating of local questions to state and national questions, has never benefited state and national questions.

On the contrary, the mixing of local and state politics with national politics, has led the corrupt politicians, for the sake of local spoils, to just so much stronger efforts to control the national parties. The practice works harm in both directions.

All the great reform victories in the cities have been won by wise people voting together in local matters, without any regard for their national politics.

420(c). Paradoxes of Democracy. It is interesting and variously suggestive that of the three principal schemes wherein the founders of our democratic national government dared not trust to democracy—the election of president, the election of senators, and the appointment of the Supreme Court, one is a dead letter, one a live evil, and only one a success; and in that one—the appointment of the Supreme Court, the suffrage acts so remotely that the voters and even the politicians hardly take the matter into consideration at all.

But after all, must we wait to abolish the interference of national parties in local elections, till every voter is intelligent and honest enough to vote independently in local matters, or until we can amend the Constitution of the United States, or devise other machinery to virtually elect senators by popular vote? Or can we do something toward divorcing local from national politics short of amending the Constitution or some parallel device?

421. Civil Service Reform as a remedy.

Professor Goodnow * suggests that the temptation to interfere would be diminished by lessening party control over municipal offices, through increasing the proportion of offices filled only by appointment, and also those that can be filled only upon examination, and whose tenure is permanent during good behavior. Long tenure of office is nearly universal in the cities of Europe, especially in the working staff. A German burgomaster is a pro-

* "Municipal Problems."

fessional expert who generally holds his place for life, except where one in a smaller city makes a reputation that leads to his being called to a greater city.

422. State functions to the state, local functions to the locality Professor Goodnow also suggests something perhaps more easily effected,—separating state functions and city functions, as far as possible, just as already in some states, state and city elections are separated. This would lessen the number of matters—such as street railways and gas and water companies, which the state legislature can control; and on the other hand, would take away from local administration and give directly to state administration, more matters of purely state policy, such as the care of the defective classes, including education, the liquor traffic, the administration of justice, and the preservation of the peace. On one side, the state could attend entirely to those things which it would naturally attend to if there were no such thing as a city. On the other side, the city could attend entirely to those things which exist solely because the city exists. If the state were entirely rural, and there were no local governments, the state government would care entirely, as it now does partly, for the preservation of order, the administration of justice, and the care of the defective classes, including the education of the immature. When a city grows up, it brings the new needs of elaborate laying-out and paving and lighting of streets; of railways on, over or under them; of water-supply and sewerage; of regulation of buildings; et cetera. Let state and city each care for its own. City children have to be educated, and city poor and insane cared for, as do country ones, but it is properly a state function. So do city quarrels have to be adjusted in court, and city criminals restrained and punished, just as country ones do, but these too are properly state functions.

An additional reason for the state keeping control of all functions not necessarily a part of the evolution of a city, is that corruption grows in city governments faster than in state governments (417), especially in

things that do not, like streets, water, etc., come under every citizen's notice.

422 (a). Education. But that division is not quite as clear as it seems. There is hardly sufficient historical warrant to call education, for instance, a state function—in America at least, tho there is in Prussia and France, and (tho only comparatively recently) in England. But in America, local provision for schools was well under way before the localities were consolidated into states, and education has been mainly a local matter ever since, with more or less supervision and assistance from the state. Perhaps the state relation to it is growing, at least in the development of state universities by the newer states; and there are state superintendents in several states: even in so old a state as New York, there is a state officer called the Superintendent of Public Instruction, with very large supervisory and advisory powers regarding the local schools, and there is a strong tendency to enlarge his powers. Toward the close of the last century, considerable agitation of the subject was going on in New York, because of the usual corruption of city government invading the school boards: so although America began with local public education, state public education may, after all, be the logical thing; and if it is, of course, evolution tends toward it.

422 (b). Police. Police, again, like education, have held a double position. In France and Germany a state police is a matter of course; and even in England, despite the tradition that strong local government is the very basis of Anglo-Saxon liberty, the police were made a national body by Sir Robert Peel (hence the name "peelers") with great improvement in the maintenance of order; and half the expense of them is contributed by the nation. Massachusetts has had satisfactory experience in the same direction, and the corruptions in the cities of New York state, as well as the fact that maintenance of order is logically an ancient function of the state—of the chief law-makin-

power, have led many thinkers to advocate a state police there.

The administration of justice, as well as the maintenance of order, is a state function already, but in cities, generally only so far as concerns the upper courts. Many cities have courts for small cases—inside of a thousand or two dollars, which are not part of the state judicial organization. Most judges, even of state courts, are elected in localities, and the police magistrates in the cities are generally appointed by the mayors. It would probably be an improvement to make them all state officers. It might be difficult for New York City, for instance, to have its affairs so largely administered by people sent from Albany; or Chicago, by people from Springfield; but the men need not be sent from the state capitals, any more than the officers of the post and revenue and United States courts are sent from Washington. Their being state officers is merely a question of how they are put into office, and to what heads they are responsible: not of where they lived before taking office.

423. America alone
in confusing local
and national
politics.

American local governments are more corrupted by national politics than those of other advanced nations. In England, local nominations by the national parties, instead of being the rule, are the rare exception, tho unfortunately there are signs of their increase, largely depending upon the fact that Parliament takes the place of our state legislatures in determining what "municipal trading" a city can undertake. Yet so far, not half the municipal offices are even contested, and probably half the elections are reëlections for good service. Here the parties contest every election, and generally give an inexperienced man his "turn". In most of the cities of the continent of Europe, the system itself hardly admits of such a thing: for a considerable part of the municipal legislature is elected by special members of the community, eminent for knowl-

edge or ability, who would not think of national politics in the connection (426 b).*

424. *Vast American wealth and good nature promote carelessness.*

Aside from the method of electing senators, there are other peculiar causes of political corruption in American history and character. Our early government was founded by an exceptional set of people, among whom a working democracy was not inconceivable. Thus, tho they were far from beginning with a system of universal suffrage, that system gradually grew up; but the increase in our ignorant classes has made it a very different thing from what the fathers expected. Moreover, the United States, being a comparatively new and thinly populated country, has such vast masses of untouched wealth in its mines, such vast tracts of cheap forest and arable land, and such immense opportunities to trade in the products of all these, that the people are all engrossed in making money, and give less heed than Europeans must, to saving it. Tweed said that nobody in New York would stop to protect a dollar from the politicians, as long as he was left another dollar to trade with. His remark was something like the truth. Not only in New York, but throughout the country generally, it is the disposition of the people to neglect their governments and let them fall into the hands of corrupt men, and to carry their differences on national questions into home politics, until the taxations and oppressions become too heavy to be borne; then the people arouse themselves and make a change, and then gradually relapse into the bad ways again.

But with all the carelessness of American cities, their debts are not always larger than those of European cities. But the European cities have something to show for their debts that ours have not—city ownership of street railways, docks, gasworks, markets, abattoirs, improved tenements, lodging-houses, baths, assembly-

* On these points and on the composition of European municipal governing bodies, Shaw is invaluable.

rooms and other things—many of them, even the cemeteries, sources of income. Our debts to a large extent represent merely the stealings of our politicians.

One other national characteristic that keeps our municipal administration poor, is our proverbial good nature. We do not "kick" enough. So wise a man as Herbert Spencer blamed us for this. Perhaps we are so sure of our more important rights, that we are careless about mere conveniences. If we would make it a duty to complain of cars not stopping, or being overcrowded, and of sanitary violations, etc., we would make a vast improvement. A poor fellow in a tenement-house might get himself into trouble if he complained of his landlord, but in Paris for instance, the health authorities invite all people to mail them *unsigned* complaints.

Even if our capable people were less careless of their political duties, there may not be enough such people to make much direct difference, but they could effect considerable through watchfulness and influence, tho perhaps not through votes: for the ignorant are more and more crowding into the cities, especially seaport cities; and in New York at least, Tammany is organized to corrupt them by charity, on the old plan of "bread and circuses" that helped destroy Rome. It has an agent in every district where the poor crowd, whose function it is to befriend them in all possible ways.

^{425. Corruption of voters under the guise of charity.} That may be a good use to make of the spoils, but only a small portion of them go that way. It is simply a plan to use up a little in order to get more. The reform element really spends vastly more money for the benefit of the poor, than the political organizations do—all the vast charities of the cities are supported by people who generally vote against the corrupt machines. But that fact is not felt by the poor man: the charity of the political machine comes to him in the name of the machine, and what is of perhaps even

more consequence, it comes through a jolly sympathetic neighbor of his own class, who knows him personally and drops in at his home. The great charitable institutions naturally render their services in a more or less routine way, through strangers, and from offices more or less remote.

The people who actually support the real charities, might use a part of their funds as Tammany uses a part of its funds. But they do not do it, partly because they are too busy making more funds, but mainly because, after all, it is not honest to work politics under the mask of charity. They are, however, in many cities, carrying their benevolence and educating influence right home to the poor through the various "settlements" started by the universities, and now taken up by many other agencies.

426. Non-taxpay-
ers voting.

There can be no reason or justice in permitting people who do not pay taxes to vote away the property of those who do. In the European cities, however wide the suffrage may be in national matters, probably not half the men vote for city officers. In Great Britain, the Low Countries, Germany, Austro-Hungary and Italy, such an absurdity as universal suffrage for city officers is unknown (except in the comparatively rare cases where a non-taxpayer's educational qualification prevents his voting being absurd); and it is in those countries that cities are best and most fully developed, and do most for the health and happiness of the very people who are not permitted to vote. The remarkable showing already quoted for Jacksonville, Florida, has been effected only under the Australian ballot, which virtually imposes an educational qualification. That fact is full of meaning regarding whatever favorable showing may have been made in Australia itself. Even in the villages of New York state, and in Texas at least, nobody can put a locality in debt for public improvements, without a vote of the taxpayers. It is the older practice, indeed, to have improvements voted only by taxpayers. It

looks as if the other practice had been worked into existence, as cities increased, by the politicians expecting to secure the spoils of the cities through the careless votes of those who have nothing at stake.

But there is a reason, tho not necessarily a good one, why the practice of the New York and Texas villages cannot be carried into the cities: the taxpayers of the towns and villages can easily vote on each appropriation, like officers' salaries and ordinary running expenses, that is not a mere matter of routine; but it would certainly be much more difficult to have that done in the more complex improvement of the cities. A very authoritative substitute was proposed in 1875

426 (a). Tilden Commission's proposed remedy. by a very eminent commission appointed by Governor Tilden of New York. It

reported in favor of each city having a Board of Finance to be elected by taxpayers alone, who should regulate all expenditures. But reasonable and ingenious as the measure was, it could not be carried. Of course the politicians did not want it: it would spoil their trade: so they raised the cry that it was against universal suffrage. It was against the absurdities of universal suffrage, of course, but not against its legitimate claims. Those claims are sim-

426 (b). Local suffrage rights differ from others. ply that every man shall vote for the officers who protect his life, liberty and legitimate pursuit of happiness. Paying the officers who attend to conveniences, and deciding upon spending money on them, are other matters, which can be vastly more safely and reasonably left to those who must do the paying, and who therefore have proved that they can handle money wisely. If such matters were so left, the poorer man would be all the surer of good officers to protect the other set of rights which are as much his as anybody's.

426 (c). Limited local suffrage in all well-governed cities. This is the plan in the cities which lead the world in administration, convenience and care for their poor—in Great Britain, Germany, Austro-Hungary and Italy.

Even taking the extreme view that a city should be

largely a charitable institution, it is not very sound policy to let a charity institution be run by the beneficiaries.*

As to France, those who know Paris under universal suffrage, and knew it before, say that it has deteriorated. In Germany, Prussia lets only taxpayers vote for city councillors, and (as is quite generally the case in Europe) the councillors elect the executive officers—burgomaster, etc. The suffrage arrangement by no means ends with letting only taxpayers vote. A graded list of taxpayers is made, beginning with the one who pays most. Those who pay the first third of the taxes, elect one third of the council, and those who pay the second and the third thirds of the taxes, respectively elect the other two thirds of the council. Taking Berlin's election of '93 as an illustration, the three portions of the council were elected respectively by 2 per cent., 11 per cent., and 87 per cent. of the taxpayers. As an indication of the faithfulness of these respective classes of taxpayers to their civic duties, of the wealthiest class, 46 per cent. went to the polls; of the middle class, 37 per cent.;

* The following extract from *Collier's* is worth quoting:

"'Idiots Vote in New York.' This is no joke. It is an illustration of the importance of ballot forms. The feeble-minded, who could not manage a Massachusetts ballot at all, are as good as anybody in New York. In 1900, when McKinley and Roosevelt were the Republican nominees, we happened to enter into conversation with an idiot friend, who may as well bear the name of Jerry. Handing him a sample ballot, we asked him how he intended to cast his vote. He made a cross under the eagle, and, in spite of attempts to confuse him, insisted that he was voting the Republican ticket. 'Who is running on that ticket?' we next inquired. 'Teddy and Matinny' (McKinley), he replied. 'What is Teddy running for?' 'Oh, Teddy, he run for President.' 'And what is McKinley running for?' Jerry thought a moment. 'Matinny running for mayor, ain't he?' Continuing our instructive intercourse, we asked him if he approved of trusts. He did, and we asked then what he understood by trusts. Jerry smiled. 'When you go to the store, you get trusted,' he replied. Jerry, in our opinion, is in many respects a typical New York elector—an extreme case, perhaps, but illuminating. Should the ballot not be arranged to meet the requirements of a somewhat more intricate intelligence?"

and of the poorest class, but 26 per cent. To be fair, it may be probable that the less wealthy classes were so poorly represented because they felt their influence was so slight. But if so, they would do well to meditate the parable of the talents. To be equally fair, it is possible that they stayed away because they are not as capable as more able men, of appreciating the reasons for going.

That arrangement is not restricted to the Prussian cities. Vienna has something like it, but it is not popular—at least among people who want to spend other people's money.

The actual experience of having the non-taxpayer vote regarding city expenses, is that so far from the non-taxpayers' votes being necessary to secure them proper accommodations in cities, there is no sort of question that throughout the civilized world they get best accommodations—education, parks, baths, gymnasiums, concerts, where they have fewest votes; and where they have most votes, they elect most people who steal the money that ought to be devoted to the voters' benefit, and alienate moneyed people from city improvement.

As between the leading cities of the leading nations, which, at the beginning of the century, spent most money per citizen, those where suffrage was universal—Paris and New York, each spent more than London, Berlin or Vienna. But in the last three, unquestionably the people were best taken care of. The money, then, must have been stolen by officers elected by voters unfit to exercise the suffrage.

Yet there seems small chance in our country of taking the suffrage away from the ignorant and shiftless for their own good—not as much perhaps as there is of curing their ignorance and shiftlessness. Those at least are things that anybody can begin on any day, and it is hard to tell how to raise the suffrage tests.

Our need of easy ways of getting good men into office is almost equalled by our need of easy ways to

get bad men out. A promising one has lately been introduced in Los Angeles, and is under consideration elsewhere. Under it, any elective municipal officer may be removed, and an election held for a successor, upon a petition containing verified signatures and addresses of a quarter as many citizens as voted for him. A similar law is now under agitation in New Jersey.

This long history seems to prove what we had already reasoned out on general principles—that in America, at least, we would better move very cautiously in increasing our kinds of public work. Public works are the great source of public spoils. If we were to try to have at public expense all the good things that the best European cities have, we should simply succeed in throwing more food to political corruption, and thus to a large extent spending our money without getting what we spent it for.

If all good citizens were alive to their political duties, those duties would not demand much care on the part of each. The community would then be pretty sure to take the ounce of preventive where it now has to pay for the pound of cure; and it would moreover be saved the heavy taxation between the times when the preventive ought to have been applied, and the times when the cure must be.

427. Universal suffrage logically implies Individualism.

It may reasonably be noted here that the advocates of universal suffrage must logically be advocates of *laissez-faire*. Those who claim that a given man is able to take care of the state, cannot logically claim that he needs the state to take care of him. If he is unfit to take care of himself, he must, in all reason, be unfit to take care of the state. Yet logical sequences can only follow one line of factors, and there may be in the situation many other factors. When the general line of motion of a stone or a solar system is once determined, to get the exact line, many contributing factors must be investigated. Yet general principles—those that hold “other things even”—are

constantly of value in general reasoning. And this general idea of the logical relations of democracy and *laissez-faire* may often serve to guide one's opinions regarding democracy, or regarding *laissez-faire*. If you want government to perform a wide range of difficult tasks, let stupidity have as little to do with government as possible. If you want stupidity to have a large control in government, give government an inversely small range of duties.

CHAPTER XXXII.

RECREATIONS AND OTHER HELP TO THE LESS FORTUNATE CAPABLE.

428. Museums and Libraries. Now to leave mere "practical" conveniences, and turn to agencies of recreation and help. So far as municipalities provide them, they are of course subject to the difficulties already indicated; but in some countries where universal suffrage has not yet been the rule long enough to "get in its fine work", government manages museums and libraries very well. In Germany, government even runs the theatres well; but in France under the Republic, the Paris opera has become a good deal of a botch, despite government patronage.

In America, these things generally have been kept as far away from universal suffrage as possible. The officials for museums and libraries are nowhere elected, tho in many places appointed by the mayors. The great museums in New York, however, are, fortunately, private corporations; and so with the great library benefactions of Astor, Lenox and Tilden; yet the city provides the buildings for nearly all. So too, in other cities, most of the great benefactions of Peabody and Carnegie and their like are in the hands of private trustees. That rule has not been universal, however: in Boston, for instance, the Public Library, tho under city control, has been a brilliant success. But Boston's interest in library matters is almost unique.

429. Parks. As to parks: our good German fellow citizens have plenty of private ones, for picnicking and dancing and concerts, but private enter-

prise never did create a large one: all the private ones in New York could be lost in a corner of Central Park, not to speak of the newer public parks; and the same is true of the ratio of private parks to public parks elsewhere. Land for large parks cannot well be had without eminent domain: so they must be government institutions.

In Europe, parks have generally been well managed. So they have in Boston and a few more of our cities. In New York it has been a constant, and not always successful, fight to keep ignorance and corruption from injuring them; and much similar experience has been had elsewhere in America.

The best way yet devised to take care of them is by putting them under commissions to be selected, directly or indirectly, by artists, architects, engineers and other competent persons outside of politics. In New York, there has lately been great improvement made by having the artistic and engineering and Natural History societies appoint some of the park officers. There is also a Fine Art Commission appointed by the mayor, whose advice is often sought, and who can veto the designs and sites for public structures selected by the other bodies. This heads off the ignorance of the sort of managers dependent on universal suffrage.

There is a strong economic argument for abundance of parks. It has gradually become plain that large tracts, especially city slums, can be taken and, with good management, partly turned into parks and boulevards, and the whole expense paid by selling off the rest for building-sites. This has been done in many cities, especially in Europe.

430. Clearing slums. Improving the dwellings of the poor, however, has not been done solely in this way. In most of the leading European cities, and a few American ones, the miserable, crowded, tumble-down, fire-trap quarters have been cleaned out, better streets put in, and healthier and safer houses put up, often with a profit on the whole transaction. Private enterprise also has generally gone in and put up better

buildings, tho very frequently they have been business buildings rather than better lodgings for the poor; and therefore the poor have, to a considerable extent, been merely driven to other slums. Yet certain it is that if the very worst slum is cleaned out, its occupants will be forced to one less bad, and their habits will receive at least a temporary improvement. In America, little more in this way has been done by municipal governments than occasionally putting a new broad sunny street through a slum, or widening an old street in it. There has lately, however, been a great increase in plans for such improvements.

Plainly, such work cannot be left to private competition: while it would be possible for individuals or private corporations to rebuild all the houses they could get possession of, possession of an entire district for the purpose of rearranging streets, would be impossible. Land for a new street is virtually a natural monopoly: for some of the owners of houses, hoping to benefit by improvement, or for other reasons, are sure to hold on to their own against every power less than government. Therefore under all ordinary circumstances, nothing can make such improvements properly and thoroughly but the one thing that can control a natural monopoly—*eminent domain.*

430 (a). Possible only under eminent domain. Too often, generally perhaps, such improvements in America have been political jobs: the politicians have, in advance, bought up the property to be benefited, often below its value, at rates established by themselves under eminent domain; and then on getting possession, they have sometimes turned around and got new valuations for damages, and collected them from the municipal treasury. On the whole, the schemes have, with us, too often been mere wholesale robberies of property-holders by the politicians, with some half-way advantage to the poor, and some incidental advantage to the community in general.

European experience in the same lines has been that, as a rule, street-openings have not been attended

with as much corruption as here, tho there was a remarkable exception when Napoleon III. made over Paris.

430 (c). The negative side. Something has been done by way of housing the poor in several of the British cities, Glasgow having taken the lead; and somewhat less in Germany and France. There has been an improvement in health and character, and those who favor "municipal trading" claim that, on the whole, the buildings return a fair interest on the money invested.

So much for the positive side. On the negative one, it is admitted that in Glasgow itself the houses do not quite return their interest, and that in London more people are driven out of the old buildings than the new ones can accommodate, and forced into quarters worse than the old. The new buildings are really fitted for a higher order of tenants, and some of them who would pay more than the rates charged, are actually crowded away. In other words, the enterprise has been made a charitable one rather than a business one, and that, to the detriment of those dispossessed to make room for the new buildings. Private builders have stopped making accommodations for the poor: they will not compete with government charity: so, it is claimed, the very poor are worse off than ever. As to the sanitary and political aspects of the case, now the landlord—the municipality, is his own sanitary supervisor—nobody else to watch him; and his reëlection depends on his own tenants: so he is not apt to be very rigid with them.

In face of the European experiences, we seem still less ready for success, at least in many of our large cities where it is most needed. In them, and in many of the small ones too, the government is so corrupt that the less it has to do, the better. Moreover, in house-building at least, tho not in street-opening, there is room for infinite competition.

For Boston, the legislature has recently voted buildings for the poor that must have so many good qualities that the poor cannot pay the necessary rent; and building

for them was at a standstill in the latter part of the century. In New York, Mr. Gould's company and some smaller ones have provided vastly improved houses at a reasonable profit,

430 (d). Success under private enterprise. both in town and in the suburbs, and are having very great and growing success. Some, however, have done it at a loss; and at least one who offered a special private entrance to each apartment, found that the people preferred the sociability of the old common halls, despite its evil features. The use of bathtubs for coal-bins has become one of the standard humors of the subject.

431. Housing the poor. But some American local governments have done something more directly for the housing of the poor, than taking property by eminent domain—especially in New York, where the conditions are worst, a good many laws have been enforced toward securing from the landlord, proper light, ventilation, drainage, and safety from fire.

Some objection has been raised to this work on the ground that it was interfering with liberty of contract. Light, ventilation, drainage and safety all cost money: if a man wants to hire a cheaper place without them, why, it has been asked, interfere with his liberty to do

431 (a). Community should regulate it in self-defence. so? Liberty, like every other good thing, can be run to an extreme. No man should be at liberty to build or occupy a house which may start a pestilence through the whole community. If a man is so poor that he cannot afford to live in a better one, and if he will not leave the city (64 a, 64 b), it will be better for him, and cheaper for the community, for it to exercise its rights of self-defence, and put him in the poorhouse at once.

The conclusion on the whole matter seems to be that in America, at least, the government would best require good sanitary conditions, and leave the rest to private enterprise and philanthropy.

432. Personal conveniences, army outfitting, etc.

We have but few good public baths, while they and other sanitary conveniences in European cities are far in advance of

ours. Some European cities have provided public wash-houses for laundry work, and Glasgow has even taken in washing, because the women did not use the public wash-houses enough to make them profitable. In view of this, with their usual consistency, the socialists who have wanted the government to do everything, are objecting because government competes with the washerwomen.

We come now to another class of government functions, and one whose appropriateness for government there is, probably, less dispute about. Until we reached the question of clearing out the slums, we had touched only matters in which the whole community is directly interested—questions of convenience that come home direct to almost every man, and where, as a rule, people can help themselves. But in the worst slums, we struck for the first time the class of people that need help. We have already admitted that everybody is interested in having city pest-holes cleared out. Similarly, everybody must be interested in having all those helped who need help; so that (to put it on the lowest ground) they

^{433. Economy and civilization both require charity,} shall not spread disease and be led into pauperism and criminality. It is cheaper to have people helped to help themselves, than to increase the sanitary force, police force, and hospitals and courts and jails.

We have seen before, for that matter (336), that civilization apparently depends upon the burdens of the unfortunate being borne by somebody else. Now shall they be borne by more able people, as individuals, or by the state? At first sight, it seems as broad as it is long: for as the able people pay the taxes, it seems to make no difference whether they give the money direct or through the state. But it *does* make a difference—all the difference in the world, and for at least three ^{433 (a). preferably from individuals.} good reasons. The state does its coarsest work but poorly, and its finest work—the care of its unfortunates and defectives, it does abominably. Therefore the less of that work that it

has to do, and the more of that work that can be done by the exceptional men and women of the able classes, the better.

It may well be asked: why should not government do the work by calling these exceptional people in to administer its charities and education? But too often in America it *will not*: for the reasons already given time and again. In America what little decent management of government charities there is, is either undertaken, as in Massachusetts, by state officials working without pay (who are very hard to get), or is forced on paid officials by the criticisms and aid of volunteer private associations like the New York Charities Aid Society. In the leading cities of Europe, as a rule, the best people are called in by the governments, and in large numbers, to administer the charities. But those cities, outside of France, are not under universal suffrage; and France has not yet got very far into the habits universal municipal suffrage breeds.

The second reason why government is unfit for the work is that the tendency of government administration is to run into socialism, communism and all other forms of robbery of the minority by the majority.

The third reason is the killing of the spirit of spontaneous individual sympathy, from which, as is abundantly proved, and with increasing clearness every day, more is to be expected than is possible from government charity.

Nevertheless, the most aid to the needy is supplied by the most advanced governments. As civilization begins, none of its conveniences are supplied by the government: the government attends only to defence and justice, "and precious little of that." In mediaeval Europe, schools and hospitals were first asylums. supplied exclusively by the churches, and are in Turkey to-day; and in Catholic countries, except perhaps Austria, there is now a larger proportion of them supplied by the churches than in Germany, England and America.

In Protestant countries, schools and hospitals are

supplied both by private beneficence and by government.

The ideal principle seems to be that government, which is the affair of all, should not undertake anything not needed by all. But we do not all use hospitals and asylums, and certainly not jails, and yet we all need that they should exist: so if private enterprise does not supply them, we have to depend on government.

Regarding hospitals and asylums, it will not do to say too confidently whether government's share in them is increasing or decreasing. It seems most probable that in America, private gifts and bequests for them are gradually moving government's activity more and more into the background. In Europe, especially in Great Britain, the cities have lately been very active in improving them, and placing them in beautiful grounds.

In Edinburgh, at the time of writing, there are not enough patients to fill the hospitals.

In Glasgow, they have even gone so far as to provide a municipal boarding-house for families whose homes have to be disinfected after sickness.

435. Relief to Individual Poor.

Relief for the poor has followed the same course as the hospitals and asylums. Private beneficence is sparing government much need of increasing its activity in poor relief; and what is better still, various private organizations for helping people to help themselves, are even reducing the numbers of the poor, by turning them into the well-to-do, so reducing the need of government care of them.

There is a peculiar situation in Great Britain and Ireland. The poor-law boards are not strictly part of the government, but are elected separately, and administer funds which are supplied both by government and private benevolence.

436. Pawnshops.

Pawnshops throughout the continent of Europe, are generally government institutions. In England and America they have been

conducted merely as private businesses until, about 1895, the "Provident Loan Society", a purely philanthropic organization, was started in New York to serve the poor cheaper than the pawnbrokers did; and it has grown rapidly, and similar schemes are springing up.

The arguments for government pawnshops are that they do not make extortionate charges, and are a great aid to the police in tracing stolen property.

437. Savings-banks. Governments providing pawnshops have, with the exception of Belgium and Holland, also provided savings-banks—in fact, the banks have been to some extent evolutions from the pawnshops, and in many countries are still connected with them. Oddly enough, paternal Germany has no *Postal Savings-Bank*, while all the other civilized European nations, have, except Switzerland. We have not, but we seemed on the brink of starting one about the beginning of the century.

In England and America, pawnshops and savings-banks are both private, except the English *Postal Savings-Bank*. In countries where both are private, there is a very great difference in the character of the two—greater in America, perhaps, than elsewhere. Here the pawnshops (except those of the *Provident Loan Societies*) are not prominent features in any way, while the savings-banks are among the great institutions.

438. Lodging-houses. As to lodging-houses, had it not been for the recent boom in British municipalization—which is showing startling symptoms of collapse (400 b, h, 414 a, b)—it would have been true that, as with pawnshops and savings-banks, lodging-houses also have been most freely provided by those governments, Germany at the head, which try to have toward the people a father's relation, of beneficence as well as of control. Republican France has fewer than Germany, and most of them are partly supported from private funds. In this regard Great Britain has been doing much to surpass the Continent. Glasgow has

the lead. She not only provides separate lodging-houses for men and women, but even has one for families (434). A small charge is made, and it pays a good interest on the investment. In America, homeless wanderers are permitted to sleep in the police-stations, but lately our people, whose habit it is, beyond that of all other peoples, to help the unfortunate to help themselves—and *make* the shiftless do it, have begun a most important device in that direction. There are already several places more or less like the Charity Organization Society's woodyard in New York, that will give supper, lodging and breakfast to anybody sawing his stint of wood; and they are often able to help applicants who appear deserving, to regular employment. There are also a laundry and sewing-rooms for women, on the same principles.

438 (a). *Throw light on street-begging.*

These institutions have thrown much light on street-begging. They are partly supported by the sale to the benevolent, of tickets directing applicants to them. These are bought and given by the purchasers to persons applying to them for charity. Such a ticket seldom finds its way to woodyard or workroom, which proves that beggars will seldom work if the chance is given them.

439. *Labor bureaus.*

There are government schemes for finding work for those who need it. The paternal governments—Germany at the head again—generally provide labor bureaus. England provides them through the "Board of Trade", a half-government and half-commercial body; and in America, they took their start in connection with private charitable associations, tho the recent agitation of "Labor" for paternal governmental care, has led to the opening of labor bureaus (and making places in them for the politicians) by several cities. A fruitful illustration of "politics" was given in the Chicago labor bureau in '99. They refused to give any information to employers whose men were on strike.

Some good, however, has been done in America by

government labor bureaus. Up to the close of the last century, Ohio and Illinois had state bureaus which had done enough good to the laborers, or the politicians, or both, to encourage Maryland to start one; and there was talk of having a chain of such bureaus all over the Union, which would help more idle labor to places where it was needed—"a consummation devoutly to be wished." The new associations of employers have lately started a great many as reservoirs of labor to be drawn on in strikes.

As to government itself furnishing actual employment, outside of its legitimate need for labor on public works: somehow it does not work well. There is always a boom in government work when there is a boom in other work: probably because then the officials feel like everybody else—encouraged to go ahead, while they feel the effect of dull times in the converse way. It has often been proposed to have government work specially active in dull times when many men would otherwise be out of employment. France tried it in the public workshops after the revolution of '48, and made a frightful botch of it (34). More success has been had, especially in Germany and America, by lending people plots of land to work on their own responsibility. This has the advantage over the French system, that the laborer cannot get wages unless he earns them.

440. Insurance.

Idleness before old age has been insured against only through the trade-unions and other organizations, but nearly all the nations of Europe, and also Australasia, have taken some steps regarding insurance against want in old age. Where premiums were demanded, it has, so far, not been found easy to make the workmen pay up. Numerous German cities have helped out the sickness and accident funds of many of the workmen's societies, and Germany is now trying to get a portion of their wages devoted to insurance against the idleness of old age, by having that portion reserved when wages are paid. She does this under the partial disguise of making the employer pay

the insurance—as if he would pay that, and also pay as high wages as otherwise—which of course he will not. Denmark gives a pension out and out. Germany and Italy add about an equal amount to whatever the beneficiary may have secured for himself. Some of the Australasian states supplement any income (or no income) that the beneficiary may have, by enough to bring it up to a fixed amount, which of course encourages everybody to spend as he goes.* So far as old-age pensions can be provided for by insurance during the active period of life, they are in every way desirable; but if they come as gratuities, they are, of course, a premium on shiftlessness, like the Australasian schemes. There is danger of their becoming, like a good many other Australasian schemes, one of the sentimental fads for giving people perfectly able to take care of themselves, something they do not earn.

Insurances against idleness, illness and old age, are by no means the only insurances the governments have undertaken. In Berlin, even fire-insurance is a government function, and is made obligatory on all property owners. The same has been proposed in London. Some of the Australasian states have begun life-insurance. Here our sailors have long had to contribute to the marine hospital fund.

441. General conclusions regarding charity.

We have now gone over about all of government work for helping the needy help themselves. One general truth regarding it appears pretty plainly: Germany—the place where the people grumble most against government—where the desire for socialistic change is most important, is the place where government attempts most for the people; and the United States, where people are, on the whole, the best satisfied, is where government does least for them. Yet the needy are not worse cared for

* For a good treatment of this subject see the *Review of Reviews* for July 1900, pp. 95-97, and the books on Australasia already cited.

under our policy than under the opposite policy.

441 (a). Mutual help better than government help. Apparently our people, left to themselves, do for each other, including their poor, as much as, if not more than, government succeeds in doing for any other people.

It may be asked whether in Germany the socialistic agitation may not be the cause of the government's activity in charity, rather than the effect: so that if our people agitated more, government would effect more. Probably not: because in Germany the government's activity in charity began before the discontent became so great.

Another principle seems to peep out in our examination, or at least an expansion of the same principle. First we saw that in early times, charity was not politics, but religion. Now we see that in the nations politically most advanced, charity, tho no longer exclusively religion, is more effective than ever before, and still is not politics—or at least is politics in a less degree than in nations under more primitive political institutions. While a large proportion of the private support of charity still comes from religious people, it does not come in the old ways: in America there is no state church, and in England not half the people belong to one. Religious people now administer a large and increasing portion of their charities through secular bodies, and the care and subscriptions come more from a desire for their fellow man's present welfare, than for the donor's own future welfare. The new motive, however, is yet worthy to be called a religious one: the founder of the most advanced religion preached no motive more earnestly. But its action in the modern secular world is a very different thing from its action through the mediæval priesthood.

Do we propose, then, to do away with all government charity, and depend on private charity alone? Surely government cannot promote the general convenience in any more general or more necessary way than by charity, or apparently in any more wasteful

and less effective way. The fact that an end is good, is no proof that any one way to it is the best way, or even a good way. We should not be as prophetic as those who favor restricting us to either government charity or private charity. The question is too complicated to judge from anything but experience as it accrues. We have both kinds with us, and both kinds seem to result from an entirely natural evolution. The government charities cannot well evolve any faster than governments improve, at least to the point of keeping charities "out of politics" by securing unpaid charity officials; and the private charities cannot evolve any faster than human sympathies and ability improve—any faster than men grow rich, and rich men grow philanthropic, both of which growths have lately been very rapid. The only plain things to do, are to improve government and improve human nature, so that *all* charities may improve.

And now let us descend from the statesman, the priest and the philanthropist, to that very commonplace individual the taxpayer. Although ^{441 (o). The} taxpayer, it is natural to mention sanitation in connection with works for the general convenience, it really is part of the machinery for the protection of rights: it concerns taxpayers as well as non-taxpayers, and the questions of devoting to it the powers of government are not to be limited to considerations of pecuniary profit. The same is true even of some forms of charity. Under health we may include freedom from the darkness and dirt of the soft-coal smoke. All these questions of cleanliness and light and quiet have their æsthetic side, and so are connected with the question of parks and museums. If taxpayers should bear the burdens of the first group, why not of the second? The question, however, is not as difficult as at first it seems: for probably the taxpayers use the latter luxuries so much more than the non-taxpayers do; and the luxuries, of the parks at least, do so much for the health of those non-taxpayers whose illness

would threaten all with infection, that the taxpayer can well afford to pay for them. Paradoxical as it may seem, it is probably true that the taxpayers are often more in favor of such expenditures than the non-taxpayers. I was present once at a meeting in a small city to decide whether to buy land for a park. A demagogue who is a small taxpayer, rallied his cohorts, not half of whom were taxpayers, and defeated the scheme. His argument was: "Mr. So-and-so and Mr. So-and-so and Mr. So-and-so let us drive through their places: what more park do we need?" Yet all the Messieurs So-and-so were in favor of the park, tho they would have had to pay more for it than all its opponents put together, and tho they had parks of their own.

Whatever opinion may be held of the right of the non-taxpaying majority to luxuriate in gaslight at the expense of the taxpaying minority, and whatever may be thought of the right of the badly-placed and badly-informed majority to secure sanitary conditions and medical help at the expense of the well-placed and well-informed minority, let us go a step farther and realize that there can be no question that it is to the interest of the minority that the majority should have the sanitary conditions at least.

It is not easy to determine just how far "we are members of one another", but it is plain that we are far enough to make it to the rich man's interest that his poor neighbor should not be spreading infection, that his poor employee should be in health good enough to earn his wages, that none of his neighbors should attack his health by foul drainage, foul smells, and foul noises, and that the expense of raising his poor neighbor beyond the habit of spreading such, is an expense for the rich man to welcome.

The question regarding libraries is a little like that regarding parks and museums, and a little more like that regarding sanitation. But altho there can be no doubt of the ultimate effect of the library in protecting the property and liberty not only of the rich

man but of the poor man who is less able to protect his own, it must be admitted that the "little learning" which has so far been disseminated among the non-taxpayers at the expense of taxpayers, has been pre-eminently the "dangerous thing": for, so far, it has only awakened among the non-taxpayers dissatisfaction with their condition, without yet affording the enlightenment necessary to discriminate the glittering short-cut quack remedies for it, from the sober and arduous real ones.

The most effective settlement of the issue between the taxpayers and the non-taxpayers would be such an increase in the number of the taxpayers as to put them in the majority. On the part of the present taxpayers, every effort toward that end through public education and liberal business, is a noble form of enlightened selfishness.

The moral effects of such agencies are to be regarded as well as the physical and financial ones, as are also those of the more impressive laying-out of cities and grouping of public buildings, now happily receiving increased attention. That noble spaces and beautiful architecture tend to expand and chasten the minds of all who gaze upon them, there can be no question. Neither can it be questioned that the mere economies, not to speak of the higher satisfactions, of living in a community of broad-minded and honest people, can justify liberal expenditure on the part of those who pay the taxes, and tend to increase the number of them—a result which, we are constantly reminded from each successive point of view, is the best security for an orderly and happy community.

441 (d). Many improvements not at taxpayers' expense.

But it is an open question whether parks, boulevards, and fine arrangements of public buildings *are* at the expense of the taxpayers. The experience is quite general that the value of near-by property is increased by them more than they cost, and it is now proposed as a regular policy for cities in exercising eminent

domain for those purposes, to take enough more land than immediately needed, to make its sale at the increased values compensate the expense of the improvement itself. Unless this is done, the unearned increment goes into private hands, except so far as it is secured to the city by the increased assessments on the adjoining property. Probably the old method of taking only the property actually devoted to the improvement, makes more room for graft than the more modern method of taking adjoining property too: under the new method, politicians would probably find it more difficult to buy for an advance. The community in general would be more apt to secure the advance.

The question whether the advances near parks and boulevards are apt to be great enough to pay not only for the land taken, and its improvement, but *also* provide a fund for its maintenance, is not as well settled regarding the last particular as regarding the others; but regarding the annual expense, there is no complaint worth considering from those who pay it, and certainly none from those who do not.

But in considering these subjects, it is most important constantly to bear in mind that the only men who really are non-taxpayers are tramps, jailbirds, inmates of asylums, or dependents on their friends. Everybody who pays rent, pays taxes; every servant who lives in his employer's house, gets less wages than he would if no taxes were paid on that house. Let the sentence stand as expressed, so that I may tell the young student that it again illustrates the complexity of the subject. Before I had finished it, I reflected that, as we shall see hereafter, taxes are not diffused or even levied with mathematical justice, and that servants' wages are regulated by dozens of agencies, some of which may counteract the effectiveness of that of taxation. "Every" is a word that writers on social subjects should use sparingly. Of the taxation question, however, my young friend will probably see all that he wants later.

CHAPTER XXXIII.

THE DEFECTIVE CLASSES.

As we have already seen (227), there is no cause of poverty. Every man is born absolutely poor. Wealth alone is caused. Yet there must be some reason why people suffer from poverty rather than cause wealth. Temporary poverty may result from temporary misfortune, sickness and accident (we 442. *The persist-* have already discussed the means of *ently poor.* helping such cases), but some people are always poor—give them work and they do not keep it; help them up and they slip back, all from sheer incapacity—physical, mental or moral,—to produce enough for comfort. “Physical” will generally describe it, if in “physical” is included a defective nervous system.

It is legitimate to inquire what duties in the way of taxpaying, these incapable people perform, that give them rights to have taxes spent upon them. Our whole system is built up on the principle that the citizen has no rights if he does not perform the corresponding duties; and to deprive him of the rights if he does not perform duties, is the only way to make him behave himself. Yet a baby or a lunatic apparently performs no duties, and still the state secures to a baby or a lunatic, rights to life and property. What becomes of our whole system, then? The answer is that the state can be generous if it wants to, just as a parent can. Nor does it all end in generosity: the state needs citizens—sometimes even to the extent of paying bounties for large families: so it is well for it to protect the babies.

But it does not need incapables and lunatics too, and the question why they should not be left to die out, has had a great deal of very profound discussion. Leaving out sentiment, and also the chance that a habit of neglecting them would soon discipline us to let some starve who ought not to, one sufficient argument seems to be that they will not "die out" when you leave them to, but that in countries where they are neglected most, they increase most. Then there is the argument that we glanced at before: states which do not take care of their incapables, do not get ahead as well as states that do. China and very backward countries generally let them starve. Civilized Europe and America take care of them. It is a very mysterious business: perhaps it will not do even to say that such people are of no use: for some very fine types of character seem to be developed by taking care of them. Yet that result does not seem to have uniformly followed political control of charitable institutions—in America at least: there have been a good many frightful abuses and scandals.

Private institutions are more nearly free from such than the government ones. Yet government alms-houses and poorhouses may be considered as established beyond debate. But when the nervous defects mentioned amount to positive insanity, the care of the insane is left to private initiative in India, Turkey and China, and it was in Christendom pretty nearly to the middle of the nineteenth century. In Christendom before that, the poor insane were left at large, or caged away somewhere in the cellars of the poorhouses, and the rich insane were cared for at home or in private asylums conducted for gain. Since then, there have been some considerable asylums built from private benefaction, as well as government asylums everywhere as needed. Probably the general increase of government asylums during the last half-century sprang largely from government's increased protection of the citizen from violence. Moreover, the

*442 (a). Neglect
Increases the
number.*

increased realization that criminality and insanity are closely allied, increased a tendency to send delinquents to asylums and reformatories rather than to prisons.

Prisons should be more like asylums.

444. The criminal. As just intimated, it has become established that criminals are only a kind of lunatics. True, some of them are very intelligent, but so are some of the people in insane asylums—outside of a few special weaknesses—and directions of the wind and phases of the moon. This is worth looking into carefully. There are few things in which the state is farther behind the scientific world, than the treatment of all sorts of defective people, criminals especially; and every citizen needs to get the best ideas that have been reached on the subject, and to do what he can to bring the state up to them.

A criminal has no passions that other men have not, unless it is the passion for goodness that inspires some rare souls. Then criminals do not sin merely because they have the passions that all men have—for gold or love or power, or even revenge; but because they lack the qualities that in better men keep the same passions under control.

444 (a). Generally defective. Among these restraining powers, the first, perhaps, is a capacity of realizing consequences. The savage and the criminal live only in the moment. When lying or thieving or killing is the immediate way out of a difficulty (and they have so little forethought that they are generally in difficulty), they prefer it to a slower way, and have none of the evolved man's shrinking to overcome.

Criminals generally are found to be even physically less sensitive than normal people: they tattoo themselves to a degree that normal people cannot stand; they do not shrink as normal people do from the sight of blood; generally speaking, they are indifferent to losses—of money, keepsakes, opportunity, friends, relatives, their own children; they do not themselves know enough of pain to be deterred by sympathy with others

from inflicting it. In a word, they are *defective*, just as lunatics and chronic paupers are. Anybody who has sat in a criminal court can see that, with rare exceptions, they are smaller, weaker and stupider than ordinary men. The best science declares that they should be treated as other defectives are.

In detail: the best science begins with Mrs. Glass's famous recipe for cooking hare: "first catch your hare"—first catch your criminal—be sure you have got a criminal. If you catch a boy who for the first time has yielded to some strong temptation, do not send him to jail to keep company with past-masters in crime, and

444 (b). One wrong step does not demonstrate a criminal. be taught by them—do not *make* your criminal in that way. After you have scared him so that he will not do it again unless he has a strong natural bent that way, or rather a great lack of the qualities that would prevent his doing it again, let him go. If he has the lack, and does do it again, then send him where he will be treated for a cure—to some reform school where he will be trained in regular ways, and taught self-control and some honest industry, and, perhaps most important, where he will be cured of the physical defects that are almost always found in criminals. And especially do not let him out until you are satisfied that the treatment has been successful. Hearty approval is due the "Children's Courts" which have done so much to keep juvenile offenders away from the criminal education of the jails, and start them toward worthy lives.

444 (c). The Indeterminate sentence. If the offender appears to be made over all right, and is let out, and goes bad again, repeat the process. By that time, tho, the authorities should be pretty well convinced that he cannot be cured, and should not let him out at all unless he gives overwhelming proof that he has been cured. If he cannot be taught and cured, keep him till he dies.

Sentencing a criminal for a definite length of time, is now regarded by all authorities on the subject, as absurd: there is no reason to suppose that the judge can tell how long it is going to take to effect a cure, or that if

half a dozen men are sent up for the same time for the same crime, it is going to take just the same time to cure any one as to cure any other.

A still stronger objection to a sentence that can terminate before a man is cured, is that nearly all the worst crimes are committed by men who are turned loose from prison simply because their "time is up", without any reference whatever to whether they are fit to be at large. As most criminals are insane, it is correspondingly insane to attempt to draw a hard-and-fast line between them and other madmen, either in diagnosis or treatment. Nobody thinks of committing an ordinary lunatic for a definite period.

*444 (d). Cheaper
to keep rounders
permanently.* The systems of punishment that we have inherited, were not based on any idea of curing the criminal. They were based on the old idea of retaliation, and on the somewhat better one of deterring others. Until recently, the criminal was not even regarded as defective or diseased, but rather as "the natural man". Now that he is proved to be the *unnatural* man, the indeterminate sentence is the only thing to fit the new discovery, and it should be indeterminate in fact as well as in name. The criminal should be released as soon as he is cured, but kept *until* he is cured.

It may seem an extreme idea that criminals should be supported in dignified retirement at the expense of honest people, but there seems no other way, except to "remove" them, which we will consider later.

The idea of support at the expense of the state is quite the rule among the criminals themselves: generally, as soon as they have served time on one charge, they get themselves sent up on another. Most do it, however, from sheer absence of self-control. Every penitentiary contains men serving their tenth or twelfth term. It would be cheaper to keep them steadily after their third, and save the community from their later depredations and the expense of their arrests, trials and carriage back to prison.

New York already has a law that when a man has been demonstrated an habitual criminal, the courts can control him in many ways that they have not the power to do in the case of ordinary criminals.

444 (e), Prison labor. There are certainly some honest persons who agree with the criminals in thinking that prisoners ought to have a life of ease at the expense of the state. The trade-unions, the country over, object to prisoners being made to earn their own living, on the ground that they would be competing with honest labor. Their competition would really amount to very little. Somewhere about one person of every five hundred old enough to earn a living, is in prison. Of course if their competition actually lowered the price of labor in proportion to their numbers (which it could not begin to: for they are inefficient), it would reduce wages but one fifth of a cent on a dollar. But what the idleness of the prisoners actually does, is that, as the community has to support the prisoners, the wage-earner pays his share of keeping them in idleness. He may think that he does not, because he generally pays no taxes. But as we shall see later, taxes distribute themselves so that the wage-earner who may pay none directly, actually does pay them indirectly, in increased prices of nearly everything he uses—from his house to his matches; and he also probably pays taxes by getting less wages than he would get if the man who pays the wages paid less taxes.

The wage-earner resists setting the prisoners to work, because he thinks and knows very little about what affects his outgo, and thinks very much, tho still knowing very little, about what affects his income. His only thought is to keep wages high; he does not reflect that everything which raises wages, except the efficiency of the worker, must raise prices too. Perhaps the spasm of high prices and high nominal wages occurring about 1905-7 may lead to a little reflection on the relation between them.

As between the unions and the prisons, a unionist makes one kind of goods; the prisoners could make,

say, a dozen kinds that the man uses. Assuming him to reason correctly that if he prevents their making the goods he makes himself, he keeps up his own wages, he nevertheless pays the higher price for the dozen kinds he does not make, with enterprisers' and middle-men's profits thrown in, while he gets the benefit of the higher first cost of only the kind he makes himself. We treated this fallacy before (228 b), when we considered the efforts to raise prices by scamping work or lazing, and to make every man rich by making money poor (361). This time, the laborer does not laze himself, but he wants other people to laze, which affects him as a consumer. We shall meet the same fallacy again when we come to taxation.

445. Euthanasia. Grave consideration has been given, and will long be given, to the question whether it would not be cheaper and safer and better in all ways, even for the incurable criminal himself, and also for the other hopelessly insane, to turn on the gas in his room some cold night when the windows are shut, or end the sad and repulsive problem of his life in some other painless way—euthanasia, as the Greeks called it. Two reasons are urged against it: the responsibility of deciding what people to favor with it, is too great to trust our politicians with; and familiarity with the infliction of death, even if done secretly and decently, is too apt to brutalize the sensibilities of the public. True, government decides now on whom to kill, but it decides with a stupidity more colossal, if possible, than it shows on any other question, unless that of "the illiterate voter". As a rule, it kills for but one crime, and in that connection does not attempt to consider the question of a man's reclaimability at all. How, then, is it in any shape to decide the very delicate question of whether, on the whole, a variety of offences point out a man as irreclaimable or not? Moreover, under the present power of the boss, it might be exceedingly dangerous to enlarge government's power of inflicting death.

It might not take long to virtually, if not nominally, get back to the old ways where the death-penalty was freely used in mere political conflict. It does seem hard, however, that when people are ready to waste thousands of the best lives in the community in trifling wars, they cannot be educated up to destroying a few hundred pestiferous lives for the sake of ridding the world of insanity and crime.

But it is probable that by the time the
^{446. A society able to use ideal remedies will not need them.} community is educated that far, it will be educated beyond criminality—there will be no criminals to treat. Euthanasia is like the other short-cut remedies—not only for criminality but for uncongenial marriages and poverty and most of the evils that afflict society: by the time people are educated so as to be fit to handle euthanasia, free divorce, communism, socialism and the rest of the short-cut remedies, they will be educated beyond the infirmities of health and temper and judgment that make the criminality and the unhappy marriages and the poverty.

What we have said regards only the
^{447. Advisability of death as a penalty.} scientific question of disposing of incurable criminals without waiting for them to commit what are now called "capital" crimes. But there has been much question also about the advisability of the death-penalty for the capital crimes. Capital punishment has been done away with in Michigan, Rhode Island, Wisconsin, Iowa and Maine, and in 1906 they were agitating its abolition in Vermont. Iowa and Maine restored it, but in Maine at least, the restoration is virtually a dead letter.

The civic arguments (the religious ones are outside of our present studies) in favor of the death-penalty for murder, arson, etc., are that nothing else is so efficient as a preventive of such crimes, that life-sentences cannot be enforced, and that so far as they are enforced, they crowd the jails with people that it is more expensive to keep than to hang. The arguments against it are

that it brutalizes the community—to such an extent that statistics do not prove capital crimes less frequent where the death-penalty exists; that statistics also prove juries less apt to convict in face of that penalty, even of the minor degrees of crime not involving the death-penalty: and so criminals are more apt to go free; that it shuts the eyes to the whole great question of reformation; that it forever prevents the correction of a mistake in the conviction of an innocent person; and, finally, Carlyle's argument that the worst use you can put a man to is to hang him—in short, that capital punishment is not only brutal but stupid. There cannot be much doubt of its brutality, but brutality is sometimes necessary, even at the hands of as good men as Gustavus Adolphus and George Washington; but stupidity never is. As to the stupidities which statistics do not touch: first as to reformation. There is certainly more chance, in one sense, of reforming a murderer, than of reforming most other criminals, because other criminals are not apt to be taken hold of in earnest at their first offence, while a murderer, tho it be his first offence, is reasonably sure to be. But moreover and most important, there are so many more possible motives for killing than for most crimes, that there is a proportionally wide chance of its being committed by a reformable person; it may even be a rough form of justice, while few other crimes can be. Probably most life-sentences are for killing, and yet the report of the New York superintendent of prisons, for 1895, says that of the life-term prisoners who have been released during the past thirty-five years, less than one per cent. have again committed crimes. Everybody knows that those discharged after serving short sentences for minor crimes, are nearly sure to err again. But on the other hand, killing ordinarily requires more insensibility to suffering than minor crimes do, and therefore is proportionally apt to be the work of a defective person. As a rule, the murders are not committed by Peter Ibbetsons

As to Carlyle's argument, an average man is variously

figured to be worth, to an average community, ten times as much as a horse, and convict labor is generally figured as worth about a third of average labor. So the murderer, if no meaner brute than convicts in general, is, at best, worth (if the trade-unions will let him work) not more than six hundred dollars; and with all the usual fuss and fees, it costs more than that to kill him. But on the other hand, it costs more still to keep him alive: so Carlyle's argument is worthless. And if, as in many cases, probably most, the murderer is an out-and-out defective natural-born criminal, it is certainly cheaper to kill him than to stand the chance of his getting out again; but even then, it would seem sensible to test his quality first, if science and politics were advanced enough to do it.

The whole question sums up like so many others—as long as people are brutal and stupid, they must do some brutal and stupid things. War—with either guns or tariffs, lynch-law and capital punishment are really all of a piece: there is no question of their frequent necessity now—there are times and places when to do without some one of them, is to do worse. Yet so far as we advance justice and science, so far we work for the disappearance of them all.

We may have been a little irregular in considering the care of the criminal as among society's functions for the general convenience, when it is really a matter of protecting against him the community's rights to property, safety and life. But we have had more than one occasion to realize that no system of classification we can make, will group all the matter to be considered, in hard-and-fast divisions. Of course the criminal could properly have been considered when we were treating of protecting rights; but perhaps, after all, to include him with the other defectives whom society treats for the general convenience, will help us realize his true position and true needs.

CHAPTER XXXIV.

THE YOUNG; EDUCATION.

And now we come to a more cheerful topic, even tho it regards another class of those who, begging their pardon, are defective and cannot help themselves—the young.

As affecting the sphere of government, we need to inquire whether when they lose their relatives, or their relatives do not care for them, they are generally cared for, in the most advanced states, by government or by private institutions. Perhaps the care of orphans remains with the churches more than any

448. Nurture. other form of charity—probably largely because each church wishes to make sure of retaining them in its own membership. Moreover, the state is also often saved from their care by the fact that many persons who have raised themselves from a childhood of needy orphanage to a manhood of wealth and beneficence, have endowed orphan asylums. The two causes have done much to limit the need of government activity in this respect.

449. Education. But beyond government's limited care of the children who do not receive care from relatives or private beneficence, its relation to the education of children in general, presents some strange paradoxes. The two civilized governments which have been most active in it are probably the most paternal and the least paternal, Germany and the United States. The paternalism of course accounts for Germany, but for this strange outcrop of paternalism in the United

States, we have to look back to the facts that the early settlers, especially of New England, contained an exceptionally large proportion of people who appreciated education, and that they realized, while the government was taking shape, that universal education was a necessary safeguard against the dangers of universal suffrage. These dangers they did not themselves generally incur; for they generally held to property qualifications, as well as educational ones.

449 (a). The illiterate voter. But in the idea that education is necessary to the voter, their descendants are inconsistent to a degree of absurdity before which even ridicule itself is paralyzed: while on one hand we insist that the voter must be educated, on the other we devise ballots with emblems, so that they can be voted by people who cannot read.

449 (b). Unusable education. There are signs in the two countries which lead in education, that even so good a thing as education may be overdone; or at least, lately there have been very portentous signs, especially in Germany, that it can be done very much out of proportion. While, as is generally known, Germany's splendid technical education is spreading her manufactures over the world, she is having trouble with many men educated in the old-fashioned literary, gossip-historical and would-be-philosophical way, who can find nothing to do. Her paupers, and especially her suicides, are being largely increased from this class. Other governments, too, despite some recent improvement, are spreading too much education of a kind that is not needed, and which on that account is perhaps doing more harm than good. The infection has spread even to Greece—perhaps because she is busier with her glorious past than with her needy present.

449 (c). Usable education. Most boys are to be mechanics, farmers and tradesmen; and all are to be voters: they should be educated as such, instead of having the education that was established hundreds of years ago for priests, and in nations where nobody voted. There is knowledge enough that can be useful in the factory,

the farm, the counting-house and at the primary meeting, in debates with neighbors, and at the polls, to take up many times the years that our boys can give to school.

The European cities have a much wiser policy than ours in this regard. They usually have excellent schools to teach the arts most generally practiced in the cities—everything from ship-building to carpet-designing, depending on what the city is interested in.

449 (d). *Practical education no fee to poetry.*

Yet of course it is not desirable that a boy should grow up merely a business and political machine. But a man who knows any subject well will find the borders of it touching everything else. Every science and every art are fringed with poetry: read Kipling's "MacAndrew's Hymn" and Patrick Henry's speeches.

As to the girls, most of them are to keep the homes and rear the families of men of moderate means: so it is absurd to educate most of them for ornaments of the homes of the rich. If there is no poetry in the kitchen and the nursery, there is no poetry in Burns or in Rafael's Madonnas.

449 (e). *Pauperization.*

In some places there has been a tendency to expand education into pauperization. Beginning very sensibly with medical care to prevent contagion, and sending public vehicles for the children in bad weather, to prevent colds, they have gone on to providing them with thick shoes, then with thick clothes (or thin ones as needed), and then with lunches; and at the present rate, we can look for schemes to provide them with watches to tell when it is school time.

The objection to providing the poor ones with at least the necessary things, is that while it would do good in a few instances, it would do harm in more. Already parents perfectly able to take care of their children, are, as experience proves, only too ready to throw the burden on the state; and the whole scheme shows itself to be one of those, like socialism and the money tricks, for national pauperization. As soon as the state undertakes to go beyond taking care of defective paupers, those who *can* earn a living begin to depend on the

state, to shirk work, to seek to rob by taxation, and so to choke off benevolence.

Where the matter has been left to private initiative, much has been done to render poor children fit to go to school. In Paris and several other large French cities there are societies of benevolent people called "school treasuries" (*caisses des écoles*) who help poor children to most of the good things we have been talking about, and many more; but they take good care, as our Charity Organization Societies do (and as no government organization will in our time), to find out where help should be given, and where it should not; and not to let the other children know who the dependent ones are. But all that is voluntary benevolence, not the act of a lot of American political heelers spending money seized by mere brute force of votes.

Those French societies, however, are not entirely supported by private benevolence: the cities subsidize them, as some American cities subsidize libraries, "settlements", etc. (a doubtful policy); but at bottom they are voluntary, both in their workers and in their subscriptions.

449 (f). State's responsibility established.

The question whether education itself is well within the province of government, or should be left entirely to private initiative, may perhaps be considered as having passed beyond the area of discussion. There is no sense in gainsaying the course of evolution—it has moved education, along with charity, from the church to the state. That the government ought to supply elementary education for those whose parents cannot supply it, or cannot be made to, is generally admitted by all but some members of one church. That one church wants to have its religious doctrines impressed in education. It claims that as the state cannot do that for each sect, no one should be obliged to pay for state education if he would prefer to educate his children otherwise.

449 (g). Parents should pay when able.

Religion, however, is not the only consideration pointing the same way. The state is supplying education without cost

to children whose parents are able to supply it. All the arguments hold against it which hold against socialism; moreover, proper education is the most difficult, delicate and expensive work human beings have to do; government, especially in America, has vastly more to do, of even much coarser work, than it can do well; hence many parents prefer private schools, and claim that they themselves should not be taxed to educate, in the public schools, children of other parents who are able to pay the full cost.

But as everybody should pay for those whose parents cannot, a practical division could be made by having taxpayers who send their children, pay for them directly, and by having the other children paid for out of the taxes. This would still make the taxpayers educate the children of the poor. This is done in Great Britain. All children must be paid for. Those whose parents cannot pay, are paid for by the Guardians of the Poor. Pains are taken, as by the French societies, to prevent the charity pupils being identified. The Holland system is somewhat similar.

**450. The higher
education.**

So much as to elementary education. We have already touched upon government and the higher education, when we spoke of the education that most boys and girls need. To give the higher education to the ordinary run of minds, even if they could assimilate it, is as great folly as to train ordinary horses for racing. But tho the state needs all its best minds at their best, badly enough to well afford to educate them, it is very certain that the state is not the best agency to educate them to their best. Moreover, after the state has got them through the grammar school—certainly through the high school, those worthy of farther education can be trusted to find the rest of the way themselves: there is money waiting in all the colleges for poor students who have the pluck and talent to make their higher training worth while.

Besides waste and pauperization, supplying the higher education is ordinarily too delicate work for govern-

ment. When so many of the leading universities are
450 (a), *Not well conducted by political pulls.* having trouble to find fit presidents, we hardly want the choice restricted to men with political pulls. While paternal Germany is sometimes said to have the finest universities in the world, the statement is open to some question. Kaiser Wilhelm has caused the dismissal of more than one professor whose doctrines he did not like; but despite that, in his universities the instruction is not paid for by the government, or even prescribed by it to the same extent as in our American state universities. On the contrary, the students sit under what professors they please, and the professors are largely paid by the fees of the students attending their courses, instead of by fixed salaries out of a general fund, as in nearly all our universities.

450 (b). *The state, the church, the philanthropist.* It is very hard to tell whether the course of evolution seems toward or away from government providing the higher education: the conditions are very mixed, especially in Europe. In American experience, some question may arise between the state universities and the denominational universities, and more can arise between the state universities and the private undenominational universities. This cannot be entirely due to circumstances: Harvard and Yale were evolved before the state universities, but Johns Hopkins and Cornell and Chicago were not.

On the whole, the state universities have borne up wonderfully under the usual danger of interference by ignorant and selfish politicians. Speaking generally, they flourish best in comparatively new regions. That suggests, of course, that until a community has progressed far enough in wealth, culture and philanthropy to build up great universities on foundations independent of the state, it seems on the whole very fortunate to have the state do what it can to remedy the deficiency. But that should not be taken as a finality in a new community, and still less is it proved ideal in an old one.

CHAPTER XXXV.

GENERAL CONCLUSIONS ON THE SPHERE OF GOVERNMENT.

This is about all we have time to consider in detail regarding government's promotion of the general convenience. Now, at the cost of some repetition (which the pressing importance of the subject may justify) let us sum up.

The supplying of conveniences by government appears to be a natural evolution, being, on the whole, considerably farther advanced in the highly evolved nations than in others. The objects first coming under government care are generally the natural monopolies—like streets and roads, with the rails and pipes that may be laid in them; and other matters too large for individuals, or, in some cases, for private corporations. Street railways, waterworks, lighting works have all been carried out by private enterprise, but as they are naturally monopolies, they have tended to become extortionate, and the communities have sometimes been driven to assume them in self-defence: even the steam railroads have needed legislative regulation of rates.

Yet there has been grave doubt of the wisdom of government's providing anything but national defence and the protection of rights. From very early times, this has been perhaps the most prominent question dividing students of government. Yet there is a growing realization that when wise men differ, both are apt to be right. Aristotle, the first systematic writer on politics, himself took both sides. Those who have held what

451. Individualism
and collectivism.

is sometimes called the restriction theory, are finding it harder and harder to draw the line. They have about all admitted the necessity of government money, mails, roads, harbors, lighthouses, surveys, almshouses, health boards and many other things; and have thought it well that government should provide that no one need starve or freeze, or even go grossly ignorant or dirty.

The main objections urged against government undertaking so many things, have been, first, that people helped too much by government, lose the tendency and the ability to help themselves; second, that the more government has to do—the more money it has to spend, the more danger of its becoming corrupt and tyrannical; and third, that even where fairly honest, it is apt to be unprogressive, obstructive and expensive. On the first objection, it is to be said that there is very little experience to learn from: governments have not anywhere been doing most of these things long, and some of the governments that have done most of them, have long been doing other things, such as keeping up a very rigorous and minute police control, which would alone account for any lack of independence there may be among their peoples.

The situation of the leading countries in these respects looks paradoxical. We have our merits as a nation, and so far we have municipalized least among the great nations. Up to about 1885, when railroads, pawnshops, hospitals and schools had been the main conveniences cared for by government, the order of the other nations in degree of municipalization, probably would have been Germany, France and Great Britain. But more recently the increase of municipalized street railways, water, gas, electricity and poor-man's homes, has probably put Great Britain, especially Scotland, at the head; and the independence

452. Municipaliza-
tion Increases with
independence, de-
creases with police
control.

and initiative of these various peoples stand in about the same order with the municipalization of public works. With reference to minute police control, these

countries would probably stand in the reverse order.

There is no evidence that municipalizing so many things has done any harm to the character of the people, but it is early yet to judge.

Now as to the second objection—the temptation to corruption and tyranny. It is hard to tell what experience shows. As a matter of fact, in Great Britain and 452 (a). Increases Germany, where they have probably the best local government. ^{with good local government.} best local governments, there is most municipalization; and in America, where we have unquestionably the worst local governments, there is least municipalization.

Regarding the third objection, Professor Meyer's conclusions and the others given in the same connection, will be remembered, and there seems to be nothing to controvert them.

The English experience seemed all one way, up to the late nineties, when, as we have seen (400 h), a great reaction set in which was overwhelming in the elections of 1906. Perhaps reaction may only be needed to correct abuses incidental to new experience, and perhaps municipalization may progress all the more.

But as between good government and municipalization, probably both are cause, and both effect. There do seem to be some faint indications (tho far from enough to prove anything) that the more government has to do for the people, the more likely are the people to take care that it shall be done right (387, 389 f, 392 c).

As a matter of fact, there has recently been a great increase in the number of things done by government, and a widening of the field allowed to government by the restrictionist philosophers.

While these two things have been increasing, there has been an increase in a third thing which may account for increase in the first two—the art of government has, on the whole, been growing. The conclusion, then, would seem to be that, as we have so often said before, what government can wisely attempt, depends on the government. The municipal governments of England

can wisely do things that the municipal governments of the United States cannot; and those of the United States can wisely do things that those of Turkey cannot.

453. Necessary limits. If everybody needs a thing, that is no sign that government should supply it when people can supply themselves. Everybody needs food, clothing and shelter: yet we have seen abundant reason why government should not supply them to those who can supply themselves.

It may be asked whether, if government were to supply them, and make people pay for them, the pauperization objection would come in; and whether, on the principle that the big industry cheapens product, government could not, by doing it all, do it enormously cheaper than it is done now. But the big industry does not necessarily cheapen product, *unless it works under competition*: only then will all poor management be weeded out, and prices kept

453 (a). Effective Industry requires competition. down. If favoritism appoints poor management under competition, it will be weeded out: because the best competitors will inevitably drive the poorest out of business. That may be hard on the poorest competitors, but not as hard as it is on the whole community for them to stay in.

We may grant, then, that universal demand for a thing that can be supplied by competition, is not a reason why government should supply it, even if the consumers pay for it. But regarding things that cannot be supplied under competition—the natural monopolies, the argument is entirely different. Tho

453 (b), Mainly determined by natural monopoly. the government would not have competition to stimulate good management and cheapness, private control would not either; and private control would have more inducement to keep prices up: therefore there seems a chance that an *ideal* government, *when attained*, might manage as well as private control, and would supply more cheaply. But even the ideal government should charge, because, as not everybody needs the product of all the natural monopolies, people should pay in proportion to what

they use; and they can only do that direct, not in the way of taxes. Yet people do not pay only as they use them, for roads, bridges, streets and street lights, museums and parks. But they do pay as used, for most ferries, some bridges, postage, car-fare, water and domestic gas and electricity.

453 (c). Tax for commodities universally used, charge for others as used.

They pretty often pay for water in the way of taxes, but there is a reason why they should: for everybody needs it. Tho they do not pay for each gallon when delivered, as they do for each postage-stamp: in a great many places they do not even pay by meter; but where they do not, they generally pay by the number of outlets, or the size of buildings, or some other proportional adjustment.

There is much agitation for providing not only water but many other things—even street-railway fares, and for that matter, steam-railway fares, free to everybody. It begins with agitation for low fares, and then grows to demand for free transit for "Labor" to and from work; and so becomes really of the same piece with the agitation for making lunches and clothing free to school children, and in fact, everything free to everybody. Nothing could be more desirable, if there were any way of producing things without material, plant and labor; but there seems no way of getting *them* free. Yet the non-taxpayer, of course, wants to increase the cheap things and the free things provided by government, and cares nothing for the taxes necessary to do it.

There is no fatal objection to government supplying "free", matters of natural monopoly, that virtually everybody uses, like roads, streets and street lights, and a few other natural monopolies, like some bridges, which, tho many people use seldom, are of the greatest importance when needed, and which could not pay for the expense and trouble of collecting fares. Government should also care for, and collect for the use of, important natural monopolies which are of frequent, tho not universal use. This, of course, provided the

state of politics will enable government to manage them without undue corruption.

454. The fundamental question. The whole question is whether the people have the political capacity to secure the profits of monopoly facilities for themselves, and use more of the profits than private owners are apt to, for keeping the facilities up to the mark.

As to whether this has yet been done anywhere, the testimony, as we have seen, is quite conflicting; but there is little conflict in the testimony that it has *not* been done under universal suffrage; and the weight of testimony seems almost equally strong that on the whole it has been best done in Germany, where the municipal suffrage is most in the hands of the ablest people (426 c). But in Germany, while the street-railway fares, for instance, are often but from a third to a half of ours, with a commutation system besides, generally deficits have had to be made up from the taxes. But people must pay for things or be pauperized; and where there is not a natural monopoly to make competition difficult, they would get them better and cheaper under private competition than from government. So far as government

455. Government service outside of monopolies demoralizing to people and officers. might try to supply them, just so far the stimulus of competition which has evolved civilization, would be withdrawn, the essential features of civilization would begin to disappear, and we would start back toward a condition of status and savagery.

To sum up our summary: there appears to be a plain line where the best government must ultimately stop—just where it will interfere with private competition and the rewards of Ability, both of which stimulate Ability to provide goods and facilities in greater variety, reliability and cheapness than political management could. And it is most important to remember our oft-repeated lesson that the more power government officers have to do things for the people, the more power they have to do things for themselves; and in any civilization yet evolved, officials are apt to use such powers for their own profit, and to the robbery of the people.

BOOK III.

TAXATION.

CHAPTER XXXVI.

GENERAL CONSIDERATIONS ON TAXATION.

A fundamental essential to both general functions of government—protecting rights and (with due caution) promoting convenience, still remains for us to consider. It is raising the money to pay expenses.

456. Taxes not the only source of revenue. Taxes are not the government's only means of securing money. But they are

the only ones we can consider in detail.

In addition to them, a little of its income comes (I) from *sales*—of public land for instance, or of monopolized products—like tobacco in France and Italy, tho that is really a form of taxation; (II) from *fines*: in barbarous times and places this is an important and much-abused source of revenue; (III) from *fees* of sundry officers, and (IV) from assessments laid on property for neighboring improvements, such as streets, sewers, parks, etc. But these all amount to little compared with the revenue from taxation.

Tho raising revenue is of course merely incidental to the main functions of government, we are by no means to conclude that it is less important than the others. It does more to make history than any other:

457. Interest and
Importance of
the subject.

questions of taxation have probably done more to cause civil wars and to overthrow empires, than all other agencies combined. A few instances among many are the wars in England under the Stuarts (tho it is a frequent mistake to attribute them mainly to religious differences), our war of separation from England, and the French revolution. That revolution overthrew the French monarchy, and bad taxation rotted out the Roman empire. Even to our own civil war of 1861-5 the question of "protection" contributed not a little.

And yet young people generally regard questions of taxation as dry and uninteresting, probably because they have never felt the shoe pinch themselves: they do not realize that they are themselves paying many taxes in enhanced prices of the things that they buy with their pocket-money or allowances, and that those sums are probably less than they would be if it were not for the taxes paid by the persons supplying them. Still less do young people realize, if they are restricted in their amusements, or even in their food and clothes, that taxation has anything to do with it. What taxation has to do with it, is just what we are going to wade through many pages to explain. It cannot be put in a sentence.

It is plain enough that one cannot spend in amusements, food and clothing, what is spent in taxes; but it is not so plain, tho it is as true, that a very large part of what is spent in taxes, especially in the United States—more especially here than in England, France or Germany—might just as well be spent in amusements, food and clothing, and the government be all the better for it. I hope that is paradoxical enough to arouse a curiosity that may help us in our "many pages".

Now what makes taxation so important? Many men 458. Everybody never have occasion for government's protection from violence or robbery, but substantially every man is taxed, whether he knows it or pays taxes.

not. Taxation takes, on an average, one twelfth of the earnings of each American citizen, and this even if he owns no property to be taxed. He is taxed if he eats sugar or wears wool: they are taxed, and he has to pay more for them on that account. The same is true, directly or indirectly, of most other things that he uses—some authorities think of everything that he uses, tho he does not pay on one thing in a thousand directly to the tax-collector; in fact, comparatively few men ever pay taxes directly at all. Yet, as we shall see more fully later, it would be a great stimulus to good citizenship if everybody did: for then everybody would realize the interest that he has in economical government—would have that very realization whose general absence from the young student has been deplored. We will look later into the question of how taxes are shifted from the man who first pays them, on to others.

**459. Rates in
different countries.**

The American pays about eight and a half per cent. of his income in taxes; the Belgian a little over six; the Englishman about seven and three quarters; but the Frenchman, with his big standing army, eleven; and the Italian lately, with his wasteful colonial fighting and domestic discords and scandals, fifteen or sixteen. This estimate includes all taxation—local, state and national. In even dollars, Mulhall says, the American has lately paid about 15; the German, 17; the Frenchman, 20; the Briton, 29; the Australian, 32; and the New-Zealander, 45. The last three are spending enormously on municipal operation. For national taxation, Mr. Atkinson estimates ("Facts and Figures," 1904) that the American pays about \$6.50 per person, while Great Britain, France, Germany and the Netherlands pay from \$12 to \$18.

**460. Methods
influence rate**

Of course the way taxes are collected largely determines the expenses of collection. The difference in the systems of taxation probably makes more than the differences of percentage of

income taken, against us as compared with Belgium and England: for with our ordinary small military expenses (omitting the pension scandal and the Spanish and Philippine difficulties) and our colossal resources, a wise system of taxation ought to make our rate far the lightest in the world.

Aside from the system of taxation affecting the rate, it affects general well-being in other ways, almost with-

*460 (a). and more-
ality, prosperity,
peace, stable gov-
ernment, and even
health and life,* out limit. A bad tax system is a powerful foe of popular morality—some people think the most powerful. You can tax flood or pestilence into a community, or you can tax them away. You can tax an industry out of existence, and throw the workmen into idleness and want; on the other hand, you can, in a sense, tax an industry into existence—by taxing a competing industry out. How taxes can make and unmake industries, produce revolutions, and rot empires, is perhaps fairly plain, but that remark about flood and pestilence may need explanation. There was once a tax on quinine that limited its use by the poor; and our high tariff has kept out Canadian lumber to a degree that is stripping woods from many places where they are needed to prevent the snow from melting too fast in Spring, and flooding the rivers. Raising the revenue from improper sources has brought these evils upon us, and raising it from proper sources would tax the evils away.

Taxation affects morality by tempting people into dishonest and even violent practices to avoid it. That is not simply an objection to all taxation. As we shall see, some forms of taxation tempt to dishonesty much more than others. Adam Smith says that bad tax-laws "tempt persons to violate [them] who are frequently incapable of violating those of natural justice, and who would have been in every respect excellent citizens, had not those laws made that a crime which Nature never meant to be so".

Taxes affect the movements of Capital and Ability.

If you happen to be a socialist or a communist or ^{460 (b). and move-} populist, or any other sort of an "ist" ^{ments of Capital and Ability.} opposed to accumulations of Capital or the leadership of Ability, you can (if you have your own way) tax them away from any community. On the other hand, if you are so little of that sort of a "friend of humanity" that you think Capital and Ability good things to have, you can attract them to your state by tax-laws wiser than those of other states. To attract Capital and Ability permanently, laws must be wise: because the attempt to attract them by unwisely favoring them at the expense of the poor and stupid, will be certain, in the long run, under free institutions, to awaken reactions, like those in the granger states in the last decade of the nineteenth century, which drove Capital and leadership away, and left people starving for lack of them.

^{461. Taxation and civilization.}

The money for government expenses has by no means always come out of the people. The primitive idea generally was to get as much as possible out of the stranger, and that idea is not quite dead yet. The great nations of antiquity paid a considerable share of their expenses from plundered provinces; Arab tribes from time immemorial have levied tribute on caravans; the robber barons of Germany taxed the traveler; even down to Spain and Cuba, not to speak of the United States, Porto Rico and the Philippines, nations have milked their colonies; and one of the arguments of high-tariff advocates to-day (tho a disputed one), is that the stranger pays the tax.

When tax-money cannot be got from the stranger, but must come out of the people, the best method of raising it depends, like all other questions of government, upon the character of the people. The most intelligent knowledge comes from comparison. With a primitive ^{462. Opposite methods illustrated.} people, in places like early Russia or Turkey, an approved way has been simply

to tell each man his share, being sure to make it big enough, then to get three or four prominent delinquent taxpayers, jab a sharp pole upward through the body of each, and plant them in a row where every one is sure to see them. Such an evidence of the promptness and thoroughness of the government, inspires a confidence among the people that brings in the taxes with great success.

While that seems a very simple way, it might not be a good one in America, tho it really would be less painful in the long run than some of the present ways. But the people fail to realize that fact, and would be apt to embarrass the collectors.

The national government's settled way, up to the war with Spain, and the way that we are rapidly returning to, as the war is becoming paid for, was just at the opposite extreme from the Turkish. Instead of impressing the matter unpleasantly on the people's attention, it was to try to collect the taxes without people generally knowing anything about it—to make taxation unobserved,

“ Like the bat of Indian brakes
Whose pinions fan the wound it makes.”

There is good authority for that plan. The great Colbert said that the true way was to tax so as to pluck the most feathers with the least squealing.

**463. Direct and
Indirect taxes.**

The names given to the system which attempts to tell each citizen clearly just what he is to pay, and to the system which tries to get it out of him without his knowing it, are Direct and Indirect.

Direct taxes are those which are paid in the first instance by the person getting the benefit of the thing taxed—such as those on real estate, accumulated property, income, inheritances and business transactions, including some of the stamp-taxes.

Indirect taxes are those paid on property which the

payer does not ordinarily expect to use, but to sell, and whose taxes he is expected to add in the price to the consumer. These also include many stamp-taxes.

The person on whom a direct tax is laid, has no choice about paying it. He must pay or be sold out.

Sometimes indirect taxes need not be paid before the goods are sold, the goods meanwhile being left "in bond" under government control; and nearly always the consumer of the articles taxed, who generally has to pay the indirect taxes in the price of the articles, can do without the articles if he sees fit, or substitute something not taxed, unless everything he must have is taxed. But even then, he can do without taxed luxuries, if he sees fit.

Not every tax falls into one of these categories and not into the other, any more definitely than things generally fall exclusively into any classes that human ingenuity tries to put them into. In fact, so little can a legislator foretell whether some taxes are going to prove direct or indirect, that some writers, especially on the continent of Europe, make different definitions, and some there, and even here, propose that the terms shall be abandoned. We have not space to go into that; we may as well stick to the definition we have started on, and try to understand its weak points as well as its strong ones. To illustrate: when a man lives in a large house, the tax he pays on it is direct, of course. But then suppose he takes boarders, of course he has to charge part of his tax to them; and the part paid through him by the boarders is indirect. He rents his whole house to somebody else. Of course he has to get interest, and taxes besides. The tax then has become entirely indirect, if his tenant really pays it, as in effect he probably does, tho there is a little doubt on that subject, which we will touch on later. Now a man imports a thousand cigars, expecting to charge to customers the duty imposed by the tariff, that tax is plainly indirect. But a traveler brings a thousand cigars which he expects to smoke and give to his friends;

the duty he pays is of course direct. A man distils a barrel of whiskey and pays the excise tax, which he charges to his customer; the tax is indirect. He concludes not to sell the barrel, but puts it in his own cellar; the tax is direct, of course. A druggist puts an eighth-of-a-cent stamp on a bottle of medicine; the tax is indirect if he charges his customer; but as he cannot well charge an eighth of a cent, the tax is probably direct. If it is a two-cent stamp, he probably charges it, and the tax is indirect. He puts a two-cent stamp on a bank check. The tax is direct.

464. *Shifting of taxes.*

We have at least seen that sometimes a tax that seems direct can be shifted on to somebody else, and that he sometimes has to pay for it in increased proportions, as for scamped work (228 b) or for cheap money (361) or for the maintenance of idle prisoners (444 e). Now how do we determine whether a tax is going to be paid by the person on whom it is first laid, or passed on to somebody else? In the same way (and with perhaps about the same certainty, in the present state of our knowledge) that we foretell storms—by studying the subject. It is simply a question of motion and friction. M. Thiers likened the diffusion of taxation to the diffusion of light, but he forgot that light is not subject to friction: the motion of taxation is: for tho the first man will pass it on if he can, the later men will prevent him if they can. Sometimes one side will win, and sometimes the other. Sometimes the payment will be shared more or less along the line: for instance, the drug manufacturers did not pay for stamps for the Spanish-war tax upon such patent medicines as were in the dealers' hands when the tax was imposed: the dealers put them on, and sometimes charged them to their customers, and sometimes did not.

Generally speaking, whether the person on whom a tax is first laid, will be apt to pay it rather than shift it, is really a question of whether it is going to cost the producer or the middlemen more than the tax is

worth, to make the consumer pay it. There is the natural tendency for the man who first pays it, to shove it on to the next man, and so on to the consumer; but generally the producer, or even the dealer, will pay the tax rather than advance price so as to curtail his market to a degree that will more than offset the tax. This is especially the case where, as in patent medicines, for instance, there is a usual retail price.

There is a broader distinction still, as to *which* indirect taxes will be shifted. Those that consumers are most apt to pay, are of course, other things even, those most apt to be shifted; and those which consumers are most apt to pay, are those on things which everybody *must* have, like matches; and those on things which the rich *will* have, like champagne.

When the producer or importer really pays the tax and passes it forward, as it were, through the wholesaler and the retailer to the consumer, all those people naturally try to get a profit for handling it. But competition sometimes leads them to pay the tax itself, instead of throwing it upon the consumer. Yet generally before the tax was imposed, competition has brought the less able producers' profits as low as they are apt to remain: so they contain no margin to pay a tax. But even then, the able producers with large margins of profit, may sometimes pay the tax, which will of course drive the less able producers, who cannot pay it, out of business.

464 (a). Need of free competition. Obviously, everybody ought to be free to compete by paying a tax if he wants to, rather than shift it to his customer. This is virtually part of the fact that all should be able to compete in prices, both for their own sake and the public's. One very important principle of taxation springs from this fact—that all competitors should be taxed alike. For instance, as linen and cotton compete, it is unfair to tax linen unless you tax cotton, or cotton unless you tax linen; so it is unfair to tax serges unless you tax cheviots, goatskins unless you tax calfskins; horses unless mules, railroads unless steamboats, rye un-

less oats, and so on through all competing things. Yet it is impossible to do this fairly: each thing is competed with by too many others—more than a tax-law can follow: therefore taxation should be, as far as practicable, restricted to the things least subject to competition, like real estate and franchises. This fact regarding real estate and franchises is very important, for additional reasons which will appear later.

It seems generally taken for granted that taxes ought to distribute themselves throughout the community, and it has been declared that they *will* so distribute themselves, until they are finally paid by the consumer. But it has also been declared that they will all finally find their way back to the land, because everything has its origin there. In fact, pretty much every conceivable shifting has been declared and denied. The truth is that the subject is so enormously complicated that we do not yet really know much about it. There is a widespread feeling, however, that a given amount of taxes, like a bump or a blow, does less harm the more widely (and therefore thinly) a given amount of concussion can be spread; and, as we shall see, it is certain that almost any tax is spread more widely than at first appears. A good general proof of this, is that, other

464 (b). Prices highest where taxes are highest. things even, in any given civilized nation, the prices of commodities are generally highest where taxes are highest—higher in small cities than in the country, and in large cities than in small ones. These higher prices of commodities represent the cost of the streets, lights, etc., which make the commodities easy of access (and therefore justify keeping a large variety), and, alas! they also represent the cost of the political corruption which gathers around municipal work.

A melancholy proof of this last point, Americans must own up to: New York is probably the most expensive city in the world, and our other cities, in proportion to their sizes, generally follow pretty close on its heels.

CHAPTER XXXVII.

INDIRECT TAXES.

Now to come to the details of the taxes levied by our benevolent national government in the manner of our amiable friend the vampire. The principal ones
465. Excise. are taxes on articles manufactured here, which are called excise; and taxes on imported commodities, called duties, the whole list of duties being called the tariff.

An illustration of excise is in the fact that Scotch whiskey smells of smoke. Long ago the British government put a heavy excise tax on the manufacture of whiskey, and so it sold for a very high price. This led many people into making it secretly, so as to get the high price without paying the excise. Many of these secret stills were in the mountains of Scotland, and Ireland too; and to prevent the smoke from betraying them to the excise officers, it had to be shut in and condensed on the premises, and some of it used to get into the whiskey. But smoky whiskey is made by well-known distillers now, because some people got to like it, and it was found that creosote, which is a name for condensed smoke, has some good medicinal qualities. Since the civil-war tax was put on whiskey, there have been some secret mountain stills in the mountains of Virginia, North Carolina and Tennessee. There are some even now, and even in New York City now.

Government thinks it worth while to collect taxes on such little stills as could be hid in the mountains, because if they did not, such stills would be sure to

increase in size and in numbers, and sell at low prices, so as to make it impossible for the lowland stills, which pay the taxes, to continue doing so. It has been more troublesome to collect taxes from the little stills than from the big ones—not only to find the little stills, but to collect the taxes. The distillers have often murdered the excisemen.

Now in such cases, it might be fair to suppose that if the lawless people were not resisting the tax-gatherer, they would be trying to make money in some other way just as bad. But nevertheless if taxes were arranged so that people could not make money by evading them, there would be one less temptation to evil-doing.

Excises are by no means laid on the liquor traffic alone. They are generally laid on tobacco the world over. During our civil war they were laid on almost all kinds of production, and even during the Spanish war they were restored on many drugs, and on perfumes and chewing-gum.

They are burdensome on industry and commerce. Moreover, they are constantly tempting manufacturers to misrepresent to the tax-collector the value of the goods they handle, and evade the taxes, at the expense of those honest enough to pay them. For these reasons they were taken off from nearly everything but liquors and tobacco as soon as possible after the civil war and the Spanish war. Yet it would not do to conclude, from the objection to these taxes, that such taxes ought never to be levied. There is likely to be some good in methods that have been used so often. It is the *amount* of the tax that leads to the misrepresentation, smuggling and outlawry. Such taxes are harmless in those respects when not large enough to make it very profitable to evade them.

465(a). Taxes may limit dangerous pursuits. Excises have even a good side, so far as they keep the liquor traffic within bounds; and tariffs have, so far as they prevent illegitimate foreign competition. Excises have probably done more good in regulating the liquor traffic

than they have done harm in leading to illicit distilling. The trouble in handling the liquor traffic has only come from going to extremes, and disregarding the facts of human nature. When the excise on manufacturing has been reasonable, it has been collected without trouble—that, in fact, is the test of its being reasonable; and on saloons, it has also been possible to collect license taxes high enough to limit the number, and prevent temptation being offered to the weak at every turn.

There are taxes besides those on distilling, that lead to outlawry and murder. Duties have made smugglers, many of whom were ready for any crime; and where, as is often the case, the boundaries between countries have been mountains, it has been easy for the smugglers to live there and hide. They have grown very wild and lawless, and besides smuggling, have often run illicit stills.

Yet duties have done a great deal of good to offset this evil. By increasing the expense of foreign goods, 466 (a). *Encourage home production.* they enable the domestic producer to compete with them more successfully. That is well for the producer, and sometimes for the consumer. While he has a right to buy in the cheapest market, the home market, when its manufactures are fairly established, is naturally the cheapest for all goods adapted to the climate and resources of a country.

In new countries, and sometimes in the new industries of old countries, a tariff even on goods that can be produced cheaper at home, is often of the very greatest use. When, under either of these circumstances, an enterpriser is trying to establish an industry that already exists in another country, the foreigner, for the sake of keeping his monopoly, is very apt to sell even below what his goods cost him, just as we saw, when we were considering competition and trusts, that people often do in other situations (149 c). Then when he has prevented the success of the new industry,

of course he can return to high prices, and is apt to get unfairly high ones.

But when the foreigner makes prices unfair, tho the home producer may be able to compete with him, he will not want to, if he can keep the tariff high enough to shut out the foreign goods, or make the prices of them higher than his own. In this case the consumer loses the benefit of competition.

There is often another consideration besides the establishment of young industries, making a high tariff desirable. A nation is sometimes put to it as a measure *466 (b). Tariff wars.* of self-defence—when another nation lays a high tariff on some important production

of the first nation, and seriously disturbs existing industry, especially when such a step is taken, as it too often is, from mere spite and desire to injure. Then a tariff simply becomes a weapon of war, offensive or defensive. The "reciprocity treaties" that have been talked about as if they were great inventions, are simply treaties of peace. A notable instance of "tariff war" arose when, some years ago, the Italians levied a very high duty on French wines, which had previously enjoyed in Italy a large market, that of course now suffered seriously. In the hope of forcing the Italians to open the market again, the French levied a corresponding duty on Italian silk; this led to a retaliation on the other side, until it all resulted in great suffering to both parties, and little good, if any, to either. A treaty has at last been made which restores industrial peace. Altho the Italian wine-maker and the French silk-maker each could get prices higher by just so much as the tariff limited foreign competition, each had to get the prices out of his own people: so the country could not be benefited; and moreover, the rise in prices limited the dealer's sales and the consumer's enjoyments. He is the one always neglected in artificial finance, either in taxation or scamping or labor restriction.

France seems about to put a prohibitive duty on cottonseed-oil—an American industry absorbing more

than \$50,000,000 yearly. Italy is considering the same step, and Austria has already taken it. American protectionists are threatening a retaliation against French red wines. Thus there seems a prospect of two noses being cut off to spite two faces, and the two more mentioned (not to speak of others) are already gone. That our commerce would breathe more freely with all the noses in place, is counter to protectionist doctrine.

Because Russia exempts from excise, such of her beet-sugar as is exported, we, under the Dingley Act, put an equivalent duty on it. So used had we become to performing such acts of aggression ourselves without eliciting a murmur from the victims, that we were quite astounded when Russia put a prohibitory duty on our sugar. She was our best customer for it, taking \$10,000,000 a year while we imported less than \$25,000 worth of the sugar for which we struck her.

Beginning with our civil-war tariffs, our hand has been against every man, and every man is at last preparing for defence. So far have our aggressions gone, that at last there is talk of a European tariff league against us, and, league or no league, the effects of one are rapidly being wrought.

France has already put a protective duty on our bacon. Germany has been on the point of making a tariff which must hurt us heavily, and at this writing commissioners are over there trying to find some way of continuing to eat our cake and have it. Other countries are preparing similar defences against us.

The advocates of high tariffs claim that the foreigner pays the tax, and so he does, so far as he can afford it—

466 (c). The foreigner sometimes pays the tax. in cases where (first) adding the tax to the price would drive the imported goods from the market, and (second) where the producer could not make up for the loss by gains in other markets; then he might bear a portion of the tax by reducing prices. But that the foreigner does not generally pay it, seems proved by the facts under everybody's eyes—that the prices of protected goods are

high, and that the consumer actually does pay those prices. And it is plain that there is no "protection", unless it makes the imported goods high, and enables the domestic manufacturer to sell his competing goods high.

The contrary statement has nevertheless deceived a good many people; but even if, after all, it is correct, how does it help France, to make Italy pay a lot of her taxes, if Italy makes France pay an equal lot of hers?

But suppose one country can get ahead of the other: so it could if it went in with an army and took the money. Either way would simply be a case of might making right. There is no more justification for the thing in morals than there is in common sense.

466 (d). Early American experience.

Yet no American can say that it is never right or sensible for a nation to take a step which may lead to a tariff war. When we were a British colony, and after, the efforts of British manufacturers to keep their monopolies here were merciless. Nobody here could begin making goods which the British competitors would not undersell at any loss. When the Revolution broke out, we were in the pitiful condition of being dependent on the enemy for nearly every manufactured article that we could not make in our own households—including, of course, the articles most needed to carry on the war. The war, of course, operated as a barrier to English competition, and our people made heroic efforts to do without such manufactured goods as they could not make themselves. The makeshifts of that time must have had a great deal to do with the development of Yankee ingenuity.

466 (e). From the Revolution to the civil war.

After the war, Hamilton, the first Secretary of the Treasury, realizing that the people must be slowly accustomed to taxation for national purposes, concealed his in a moderate tariff *for revenue only*. The English manufacturers, of course, tried to recover their monopolies. Our people were nearly all farmers, and naturally wanted their manufactured goods as cheap as possible; and

for the moment, cheap goods of course meant English goods. But distance put English goods at some disadvantage, and inevitably some manufactures began to develop here; it was not until 1816, however, that they became important enough to secure a *protective* tariff. Then a considerable one was put on, which was increased in 1824. But by 1832 people (especially in the South, where there were no manufacturers) began to realize that our manufacturers had grown strong enough to take care of themselves, and were making undue profits at the expense of men who were not manufacturers, by charging for domestic goods as high prices as the tariff made necessary for imported ones. Consequently, it was arranged that duties should gradually decrease until 1842. But by that time, the manufacturers had rallied enough support to the doctrine of protection, to again increase the tariff, and it was kept moving up and down, as one party or the other got control, tho it never got very high until money was needed to carry on the civil war.

466 (f). Since the civil war. During the civil war, the tariff was made very high solely for the sake of revenue. But after the war was over, and people with sufficient intelligence began to think that they would again like cheap goods and more goods that could not well be produced here, they found that during the war, powerful manufacturing interests had grown up under the tariff, and now were ready to do anything to retain their profits. All idea of protecting only industries that needed it and could ultimately justify it, has been abandoned. There are fifteen hundred articles in the tariff, of which fourteen hundred yield no revenue at all, but only enable American manufacturers to keep their prices at the tariff rate. Of the remaining hundred articles, only about twenty-five yield revenue enough to be worth keeping on the list. The most frightful corruption ever known in our politics has been the result. Congress has been largely made up of the manufacturers themselves and their agents, and it is generally believed that the Senate

itself was bought by the Sugar Trust in '94. Each industry has struggled for all the "protection" it could get, and has agreed to vote protection to other industries on condition of getting their votes in return. The high tariff made the revenues enormous, and then the manufacturers' party, rather than reduce the tariff, recklessly threw the revenues away, partly in wasteful river and harbor improvements in localities where commerce did not justify them, but mainly in giving war-pensions to hosts of people who had no reasonable claim, to get their help to keep the dominant party in power.

466 (g). Industrial effects. The war had kept manufacturing within bounds, despite the war tariff; but when peace and prosperity returned, and even increase of the tariff with them, there was a wild rush into the protected industries. The country became glutted with manufactured goods that could not be sold. The great panic of '73 was attributed to this over-production. Meanwhile, although some manufactured goods necessarily fell in price, many agricultural products—notably wheat, remained as high as ever. The protectionists, suffering from overdoses of their stimulant, cried, like the victim of alcohol, for more of it. The orgy reached its height in 1890, when the McKinley bill made an increase in the tariff so far beyond any rhyme or reason, that the people at last got their eyes open, and, in the election of '92, swept the tariff party from power.

466 (h). Both parties corrupted. But that by no means disposed of the matter. The corruption then began to attack the Democratic party, which had not even the excuse of professed principle, for continuing the enormities. That party, as soon as in power, prepared, in the Wilson bill, a new tariff bringing the duties somewhere nearer reason; but, as already intimated, three of the party's senators refused to vote for it unless it gave protection to the Sugar Trust; other interests refused that protection unless they themselves were granted protection; and so the new party in power,

although it lowered some of the duties, failed to give the reform which it was elected to give.

The Republicans, since their restoration by the election of '96, have not entirely restored the duties lowered by the Wilson bill. Their experience with the McKinley bill has kept them cautious.

But as already said, a protective tariff is an act of aggression against the trade of other countries. It is wonderful how long and patiently our aggression of this kind against other manufacturing nations, has been borne. But they are at last turning against us, and the merited destruction of the system by reciprocity treaties or dual tariffs, is only a question of time, and probably not much time.

Raw materials, as a rule, have advanced materially in price since about 1890, but manufactured goods, in which American ingenuity is a large factor, have shared little in the advance, and have in many cases declined. A notable instance is that hides are nearly fifty per cent. higher, while boots and shoes are a little lower. The conclusion is that with the tariff taken off to cheapen raw material on the one hand, and on the other to lead foreign markets to seek our manufactured goods in exchange for their own, our prosperity would be greatly promoted. *And even now many manufacturers are selling in foreign markets at prices less than the tariff enables them to charge at home.* In 1905, the congressional elections showed a large increase in the demand for free raw materials from manufacturers.

466 (1). *Tariffs tend to expand.*

In the foregoing account, the term "manufacturers" has been generally used to indicate the supporters of the tariff, because they were the principal actors. But the fact is that when there is a tariff on manufactures, those not manufacturers rush in for "protection" too. No matter how wise such a tariff at its inception, it not only stays after it becomes harmful, but always spreads till it does become harmful. Not only must the farmer's crops, and even his eggs, be "protected", but the pure

bounty of Nature in forests and mines, must be, until, as already stated, artificial prices, which everybody using wood must pay, sweep off the forests, and bring down the floods, while right across the Canadian border are endless forests that now answer no human need.

466 (j). Protection and wages. A protective tariff is alleged to raise the wages of the laborer. It does so about as much as it does those of the hen when eggs are "protected". The laborer's employer, like the hen's owner, alone gets the benefit. This is proved by specific facts abundantly cited already (95 *a*); and by the general fact that in the long run wages depend on ability, not on juggling statutes. And it is because of his ability, not because of the tariff, that the American mechanic's wages are the highest in the world. Moreover, a protective tariff brings little new capital into the country (only in cases where it makes foreigners establish plants here) and the wages of labor of any given degree of ability are determined mainly by the amount of capital that enterprisers can use for wages, and the number of men among whom the wages are divided. Note the expression: "*laborers of any given degree of ability*". The higher the ability, the larger the share of capital ready to pay them, and the fewer the men to share it.

Even if protection did increase wages, there is no question that it increases the prices of what the wages buy. But we always have with us that old folly of the wage-earner thinking only of what he gets, not of what he spends.

Protection brings capital out of other pursuits into the protected manufactures; but it must also bring more laborers to divide it among, as the capital could not be used without labor. The tariff simply diverts money and labor from one pursuit to another. That indeed is one of the professed objects. The protectionist claims to improve on the distribution of labor indicated by blind and unaided Nature.

It is claimed that the protected manufactures attract foreign labor. But it is hard to see how that can

increase American wages. Attracting foreign labor is just what protectionists claim that they do not want to do, and of course insist that they do not do. They have even put on such prohibitions to keep it out, that the law has had to settle whether a foreign musician or even a foreign clergyman could land on our hospitable shores, and while we complain of the inhospitable reception of travelers by some savages, we put Chinamen in jail for no crime but being among us.

When countries have raised their tariffs, there has been no lasting advance of wages not reasonably attributable to other causes, and when countries have lowered their tariffs, there has been no lasting decline of wages not attributable to other causes. The recent spurt of protectionism in France, Germany and Italy has made no sudden rise in the wages of mechanics; and under virtual free trade, English mechanics have had their proportion, and probably more, of the advance in wages general during the last half-century.

466 (k). Numbers concerned. But assuming for a moment that protection does benefit all engaged in the protected industries, and that it does not do so at the expense of the community; it is still worth while to consider what portion of the population of the United States is benefited by protected industry. Under the census of 1900, there were but a little over six per cent.* of the people

* There were about 29,000,000 engaged in gainful occupations. Of these about 22,000,000 were included in agriculture, fisheries, mining, professional and personal service, trade and transportation. Of the remaining 7,000,000, about 1,800,000 were blacksmiths, butchers, builders and heavy lumber workers, with whom of course there can be no foreign competition, and of the remaining 5,200,000, less than one third were in pursuits really open to foreign competition. But as there was only about a third of the population at work, it is fair to presume that tho but about one third of the 5,200,000 workers, as above, were affected by the tariff, each of them had two others—women or children or old people, dependent upon him: so industries supporting about 5,200,000 were affected by the tariff, or a little over six per cent. of the whole population. In preceding editions of this book, the non-working dependents were not taken into the calculation, and it was based on the census of 1890. The two

at work in the United States, who were directly affected by the tariff, while the remaining ninety-four per cent. of the people were paying prices enhanced by the tariff on the immense product turned out through machinery by the six per cent.

Mr. Atkinson says that of 29,000,000 at work, only 1,000,000 are directly affected by the tariff.

I have said "the remaining ninety-four per cent", but that does not tell the whole story: the six per cent. themselves have to pay enhanced prices for all the protected goods, even each mechanic for those he works on himself.

The wages of the six per cent. are not any higher, other things even, than the wages of the ninety-four per cent.: so the profits resulting from the manufacturer being able to get tariff prices, must partly go into the pockets of the enterprisers, and are partly wasted in the depreciated prices of manufactured goods that come with the occasional gluts which high tariffs always cause. Outside of monopolies, however, they are probably not as great as the advocates of the system claim.

466 (1). *Gluts.*

A glut is an excess of production beyond what people can consume, or beyond what they have other productions to exchange for (466 g). Nothing gluts an industry oftener than duties so high as to shut out foreign competition, and so not only to tempt too many people into producing a certain thing, but to draw people away from making the things that would exchange for it. As people sell and buy for money, they do not, at first sight, appear to exchange things with each other. But as we saw when we discussed money, money is but a means of making the

censuses show the proportions to be about the same. True, there are tariff rates on most articles produced by the farmer, fisherman and miner, but as those articles are often perishable, and generally cost more to bring from elsewhere than to produce here, there is virtually no foreign competition to "protect" those producers from.

exchanges quicker and easier. Nobody sells anything for money because the money itself is of any use to him: he only wants it to pay for other things. It is aptly called a "*medium of exchange*"—in the middle between the thing parted with and the thing acquired.

But to go back, people get glutted goods cheaper than goods of which there are not too many; but they get them cheaper only after they have paid, at times when there were no gluts, more than the difference, in prices enhanced by taxes—*more* than the difference, because besides what they get back in low-priced goods, they have to pay the enterpriser's profits when he makes any profit—and he makes profits large and often, or he would not be standing the loss from occasional gluts, or making his enormous payments to the campaign funds of the party which keeps up the protective system. The consumers have to pay these campaign expenses in the long run, and have to pay duties on such foreign goods as the protective system leaves room for them to buy, with the expenses of collecting those duties, and probably in some instances with profits on those duties, and threefold profits at that—to the importer, the jobber and the retailer. We have seen how these attempts to make money by jugglery succeed, in scamped work (228 b) and poor money (361) and idle prisoners (444 e) and indirect taxes generally (464).

*466 (m). Effect
on trusts.*

On trusts, the influence of a protective tariff is very bad for the public interest. It deprives the public of the benefit of competition between the foreigner and the trust. So if the trust covers the whole home production of a "protected" article, people's only control over its prices will be in doing without its products. Moreover, the labor trusts are just as eager for "protection" as the other trusts, and have obtained laws shutting out skilled and able immigrants whom the country as a whole greatly needs.

*466 (n). Con-
clusions.*

The conclusion, then, in regard to raising taxation by tariff duties, is that it is at

best a weapon; that in young countries it may be salutary as a weapon of self-defence; that in all countries, as a weapon of self-defence or even of industrial war, it may at times appear necessary, just as any other weapon sometimes may be; but that in a mature country at peace, it is most dangerous and pernicious.

Our national government adheres to so *466 (o). Causes of American system.* bad a method, largely as a matter of course, from historic habit, as already

indicated (466 e), but especially for two reasons: (I) because, as the national government has charge of all our relations with other nations, and as, consistently with that, the Constitution prohibits the separate states from levying duties on imports or exports, that field of taxation is left specially open to the national government. And (II) the Constitution (Art. I, Sec. II) provides that "all direct taxes shall be apportioned among the several states according to their respective numbers". Now the value of property is not at all "according to their respective numbers": there are rich states and poor states having about the same population. Suppose two states equal in population, but one five times as rich as the other: then if government wanted to collect the same amount of direct tax from one as from the other, each man in the poor state would have to pay five per cent. of his property where each man in the rich state paid one per cent. of his. This makes it virtually impossible for the national government, under the Constitution, to impose some of the direct taxes so that people will submit to them, or ought to submit to them; and therefore the government is driven to the indirect taxes. But these are really more just only so far, of course, as they are put on things that a man can comfortably do without if he pleases.

466 (p). Expert opinion on American method.

The feeling that our national system is wrong, is strong among substantially the whole body of trained students of the subject, and their opinion is not less valuable than

if they paid a heavier share of taxes: for taxes, especially indirect taxes, come proportionally hardest on people of moderate fortune, as we shall see more fully later, and they are quite apt to know best where the shoe pinches.

The government has already imposed some direct taxes—such of the stamp-taxes as are direct, and the income-tax during the civil war, when people were ready to submit to almost anything to save the Union. But when the same thing was tried in 1894, the Supreme Court decided that it was a direct tax, not "apportioned among the several states according to their respective numbers".

467. Stamp-taxes. It has been found desirable to insure the payment of duties and excises by something farther than the usual precautions in collecting the taxes. To many things—especially packages of tobacco and cigars, kegs of beer, bottles of wine and spirits, and packages of patent medicines, all of which are favorite subjects of duty and excise, it has been found well to affix stamps showing that the tax has been paid. Unstamped goods offered for sale can then be seized.

Some things pay both tariff and excise: each box of imported cigars now bears a duty stamp and an excise stamp; and for some time after the Spanish war, each bottle of imported wine or spirits, after paying duty, bore an excise stamp also.

As already said, some of the stamp-taxes are direct, and we are now discussing only indirect taxes, but there is not much to be said about stamp-taxes anyhow, and we may as well have done with them here. They have been carried farther than as mere vouchers for indirect taxes on merchandise, where the buyer of the goods often pays for the stamps. Governments often sell stamps which have to be put on legal instruments and commercial papers, such as deeds, notes of hand, bank checks, telegrams, passenger-tickets, etc. This was done in America for the civil-war tax and the

Spanish-war tax; and in most European countries is a permanent thing—mainly for armies in expectancy of war.

467(a). Both direct and indirect. Whether those stamp-taxes are direct or indirect depends upon where the stamps

are put. On checks and documents, usually they are direct, tho the telegraph and express companies have sometimes succeeded in shifting them to their customers.

Now in this sense, whether a stamp-tax (outside of being a voucher for excise) is a good one, Americans think depends somewhat on who imposes it—as do the merits of all taxes, for that matter. It was perhaps the chief cause of our separating from Great Britain, but when we have imposed it ourselves during war, we have paid it cheerfully.

It is a pretty good sort of tax in so far as it is pretty sure to be paid by most of those fairly subject to it, and very sure not to be paid by those who are not; but it yields comparatively little, is a daily bother to business men, and, of course, is somewhat in restraint of trade, and for that reason cannot well be pushed to

467(b). Often merely a petty nuisance. a very large amount. So (carefully re-

membering that we are not now considering stamps on peculiar merchandise, and on stock transactions, both of which directly trouble but comparatively few people, and the latter of which contain a large element of gambling) a stamp-tax is generally a pestiferous little nuisance,* which those who pay enough of it to be entitled to be heard, would rather pay double, in a lump sum, for the sake of getting rid of.

It is then to be regarded as one of the taxes worth serious discussion, only as petty nuisances are worth serious discussion. It is not to be compared in

* Mr. Dingley expected his new internal-revenue system, devised for the Spanish war, to yield about \$210,000,000 annually. Of this, he expected only \$15,000,000 to come from stamps on checks, telegrams and express receipts, which are bothering people at every turn.

importance with the other taxes we have considered, and are to consider—especially for a rich and peaceful nation not obliged to exploit every possible source of revenue.

The preceding paragraph was written in 1900. A sufficient comment on it is that virtually all of the stamp-taxes have since been repealed.

CHAPTER XXXVIII.

INDIRECT TAXES (CONTINUED).

General Conclusions.

468. Indirect taxes expensive to pay and to collect. Indirect taxes, as now administered in the United States, are generally much more expensive to collect than direct ones.

And as intermediate profits sometimes follow indirect taxes (464, 466 *l*), they are apt to be more expensive to pay, as well as to collect, than taxes which can be paid direct.

As the United States taxes have been laid in recent years, collection of the excises costs about half as large a percentage of them, as collection of the duties.

From 1870 to 1890 the tariff yielded more than the excises—about double. A few years later the results were reversed.

468 (a). Hard on the poor. Indirect taxes are not gauged in proportion to people's ability to pay: as generally administered, they fall unduly upon the poor, and do vastly more than all the injustices in distributing the product of labor, toward making "the rich richer and the poor poorer", tho even they with all the other agencies, are not able to accomplish the result. To get enough out of such taxes to make them worth while, a large portion of them must be placed on the necessities in universal use. These absorb all a poor man's income, while most of a rich man's income goes in luxuries, and it is no privation for him to pay taxes on them; and moreover, the portion of his in-

come which he does not spend, indirect taxes cannot touch at all. This is an argument, as we shall see more clearly later (470*i*), for taxing such portion of incomes as is not spent in necessities.

Taxes are generally made very heavy on the rich man's luxuries (as, if there are indirect taxes at all, they ought to be), yet he has his choice whether to indulge in those luxuries or not, while the poor man has no choice whether he will use taxed necessities or not. True, there is no excise on most things produced at home, but he cannot get along with those alone, and if he could, there is a tariff on nearly all the corresponding foreign productions—on drugs and sugar and woolens, for instance—for the avowed purpose of enabling the American producer to charge that much more: so the poor man has to pay higher prices to the American manufacturer, in many cases where he does not pay the American government.

468(b). Stimulate corrupt legislation. Indirect taxes, then, are hard on the poor compared with the rich. And there is another social division apt to result from the indirect system: Indirect taxes set off a portion of the community with interests against the community as a whole: for they give manufacturers powerful inducements to influence legislation for their own benefit, at the expense of the rest of the community.

As a peculiar advantage in resisting reform, such interested parties have the cry of "vested interests". When factories have grown up under a system of tariff and excise, even when changed circumstances make the system bad, the attempt to change it is naturally met by the cry that legislation ought to respect "vested interests". So it ought, to a reasonable degree, especially in taxation. Some writers go so far as to say that a bad system is apt to be better than a good change. But the moral is that, as changes so upset industry, it is doubly important to make taxes so wisely that they will stand.

Yet those directly interested in the tariff, do not always go on this principle. On the contrary, they are

constantly changing it on speculation. Since 1862, the tariff has been changed some twenty-five times, all but once at the instance of some of the protectionists who had "little games" of their own to play.

468 (c). Fail to stimulate interest in government. Indirect taxation lessens the citizen's interest in good government. Under it, the citizen cannot know what he is paying to the government, or whether it is more or less this year than last. He has no plain direct experience, in his own person, of economy or extravagance in government, and therefore has only a hearsay interest in working for honest and competent government.

The government of the United States has increased in cost to each citizen from \$4.44 for the year 1884 to \$7.14 for the year 1904. During both of Cleveland's terms, the cost was less than in the terms preceding and following his. If the taxes had been direct, is it likely that the people would have permitted such an increase? When, as in New York City, only one man in twenty-five pays any direct taxes, it is no wonder that the government is extravagant.*

* Speaking on this subject in the House of Lords in 1860, the Earl of Derby said that "by making the whole revenue of the United Kingdom depend upon direct taxation the pressure would be so odious that wars would be avoided, because no party would incur the odium of carrying them on". (Wells.)

In England, the treasury gets but five sevenths of what consumers pay. Some good authorities put it as low as three fifths. In Prussia it costs four per cent. to collect direct taxes, and twelve per cent. for indirect. The Frenchman pays not only the tax, but one fifth of the cost of his goods is wasted on collection expenses and intermediate profits. But to find the extreme of this waste, we must come to the United States. In 1846 the Secretary of the Treasury estimated that the government got \$27,000,000 from duties, while the people paid \$44,000,000 in increased prices of the articles taxed. In '67-8, a leading authority in the New York Constitutional Convention, expressed the opinion that the consumers paid the dealers and manufacturers at least half as much again as the amount of the tax. About 1883, Mr. Springer stated in Congress, as the result of a careful examination, that during the

One feature of this consideration has been pointed out to me by Professor Trent. The novelty and propriety of the suggestion tend, did not his work in his later field prevent, to make one regret his abandonment of Economics. He points out that the indirect taxpayer has no such evidence to give him the standing in court that the direct taxpayer has, if he wishes to exercise his right to sue a public officer for misappropriation of taxes.

468 (d). Why they are popular. Yet in spite of all these objections to indirect taxes, they are popular with many people, and for the reason that we have many other governmental institutions—the weaknesses of human nature. Most men do not know anything about indirect taxes, but pay them without even knowing that they are paying taxes. Men do not pay most of their taxes at the government offices: they pay the indirect ones at places which they object less to going to—the grocer's and, too often, the bar-room. That is the main reason why they prefer indirect ones. Yet if wise statesmen were to take pity on them and give them the cheaper direct taxes, they would reciprocate by turning the wise statesmen out of office. There is not a community in the world with sense enough to pay all of its taxes directly. Colbert (462) realized that where taxation is concerned, men are generally geese, and wise statesmen treat them as such.

All this indicates that the ways of collecting taxes, utterly irrespective of their amount, might make a great difference in the contentment and happiness of the people. Yet it is difficult to collect them in the

twenty years preceding, the people of the United States had paid in consequence of indirect taxes, but over and above the taxes themselves, more than eleven billions of dollars, of which the government had not received a dollar.

As one instance showing how much manufacturers have profited by systems of indirect taxation, in 1883 the match-manufacturers objected to the removal of a tax of one cent per package, and when the tax was removed in spite of them, the price fell a cent and a half a package. (Condensed from Wells.)

ways that will really hurt least in the long run. Taxing is a sort of surgical operation anyhow, and the way that really costs the patient least, may be the most painful for the moment.

Taxes can be made easier if paid in instalments, rather than in lump sums, and the indirect tax is of that kind, but, as already said, it is the most expensive, tho the one the vast majority of people most willingly pay. A few cents a pound when one buys tea and coffee, or a little increase in the cost of something that many men are ready to pay as high for as beer and whiskey, seems a small matter (especially as men generally do not stop to think about it at all) compared with what the same amount of taxes would seem if they and other indirect taxes were all presented in a lump sum, once a year, in, for instance, the shape of a government claim against a man's house.

But as it is, there is a tax-claim against every man's house, if he has one, or against his landlord's if he has not. But that is just so much the more reason why, if that claim were increased by diminishing his indirect taxes, he would want to turn out the government increasing it, and bring in one that would *appear* to tax him less. And there is something more substantial than mere appearance in favor of the indirect system, or a combination of the two: men with little forethought or little property (and the two are apt to mean nearly the same thing, and moreover, the vast majority of men are of that kind) would be sure to be found lacking the means to pay their taxes if all were presented in one big bill, while they manage to pay them a trifle at a time, in increased prices of their purchases.

Some claim that so far as people realize them, indirect taxes do encourage saving, but that seems rather fine-spun. A considerable lump sum is a more effective argument than a charge of small-shot petty sums. Probably nobody ever yet lessened his total expenditure on account of taxation—refused the thing he had the money to pay for, because part of its price represented

a tax. If he could not afford it, the tax did not make him less apt to spend his money in something else, or more apt to put it in the bank.

468 (e). Summary for and against. To sum up the case for and against indirect taxes: they are *apparently* so easy to pay that it is quite probable that no country is yet civilized enough to get along without them. But probably, as people grow wiser, such taxes will ultimately disappear,* because they keep the payers blind to the extravagances in government, are corrupting to people and rulers, and tho the paying is comparatively easily done, they are really the most expensive of all taxes to collect, and the hardest of all taxes on the poor.

* From 1841 to 1896, the proportion of the Imperial Revenue of Great Britain coming from indirect taxes, fell from 73 to 52 per cent. This was accompanied by a great increase in the consumption of things used by the laboring classes. (Wells.)

CHAPTER XXXIX.

INQUISITORIAL DIRECT TAXES.

Income and Inheritance Taxes.

469. Direct taxes divided into Inquisitorial and Obvious. We come now to the taxes generally called direct. There is one broad line of distinction that we may as well follow in treating them: some of the objects are seen of all men, while others cannot be got at without prying into private affairs.

If you have ever waited on an American dock (European custom-houses are not half so bad) to have your baggage examined, you probably think that we have considered some of the prying taxes already.

But, as remarked more than once, the human mind cannot often make any classification that does not overlap—probably because there are no hard-and-fast divisions in Nature. Probably we cannot do better than group the direct taxes into Inquisitorial and Obvious.

Now to begin on the first group, and from a point we are already a little acquainted with: the promotion of saving is not the only good reason for taxing the things that enter into a man's consumption. There are a good many reasons why the rate at which a man is willing to spend on himself and his family, should be the rate at which he should spend for the general good. But the more a man *must* spend on his family, the less he can afford to pay in taxes. A way around has been found in the direct tax on luxuries that a man can do without—horses, carriages, billiard-tables, pianos,

watches, jewelry, etc., etc. But on the other hand, watches, jewelry and many such things are easily concealed, the taxes are not only inquisitorial, easily lied about and expensive to collect, but they yield too little to justify a capable people in fooling with them.

470. Income-tax. As we cannot, then, approve of many of the taxes on a man's outgo that we have so far considered, can we say anything better for a tax on his income? It would be at least direct enough, and as it could not very readily distribute itself, we would at least know whom we were taxing. Moreover, the income-tax would avoid some injustices inherent in other taxes: a man would have to pay only on *470 (a). Falls only on successes and active property.* his successful operations, where he could afford to, and not on his failures. On the other hand, a dealer has to pay duties and excises whether he makes a profit on the goods or not.

Moreover, a man would have to pay only on property returning income—not on idle property. But not all people consider that a merit: the Henry George school thinks idle real estate the best possible object of taxation, as tending to force the landlord to improve. That, however, is a frightfully stupid scheme, at least when put in so extreme a way: for the money to improve the real estate would have to come out of some other mode of production where it is probably more needed, as proved from the fact of its already being there. The scheme is simply one to rob Peter to pay Paul, like nearly every other scheme to affect industries by taxation. We will consider this subject farther when we come to the taxation of real estate.

Now it seems very desirable that each man should pay according to his ability to pay. All the authorities *470 (b). and is proportioned to ability.* agree on that; and a man's actual income each year, if he earns it himself, is probably the best test of his ability to pay; and if he does not earn it himself, taxing it is probably the best

way to secure his contribution to the common good, as he makes none by producing.

We seem, then, to have at last reached the ideal tax. But it is too ideal for this imperfect world. The assessors ^{470 (a). Like all inquisitorial taxes.} have to depend on the taxpayer's statement ^{a premium on lying.} of the amount of his income: they can never know the facts for themselves. So, as long as human nature remains as it is, there will never be an income-tax, any more than there will be a tariff- or excise-tax, which will not be a swindle of the taxpayer scrupulous enough to tell the whole truth, for the benefit of the taxpayer unscrupulous enough to conceal it. All these inquisitorial taxes—direct or indirect, that would pry into people's private affairs, put a premium on lying, and make the truth-teller pay the liar's taxes for him.

There are at least two taxes that people cannot evade, but they can evade some easier than others—income-tax, inheritance-tax and personal-property tax easiest of all.

Perhaps if dishonest men do not make a clean breast to the assessor regarding such matters, that should not prevent honest men from doing their duty. But very conscientious men might question, and, as a well-known fact, do seriously question, whether it is their duty to pay all the personal and income and inheritance taxes of the community, and let the rascals go scot-free. The result in practice is that, despite an occasional exception, men who scorn to evade any other obligation, unhesitatingly evade the inquisitorial taxes. A striking illustration of this is nothing less than that, as Mr. Wells says, "a high court . . . has recently decided that 'perjury in connection with a man's tax-lists does not affect his general credibility under oath.'"

The premium on roguery is certainly higher in an income-tax than in duties and excises, just as the income-tax represents the profits of a year, while a duty or an excise concerns but a single transaction, and lying is unquestionably easier regarding income. Stamps and customs inspections have made evasion very difficult regarding tariffs and excises.

470 (d). Violates rights of privacy. The public has no right to know a man's income: it would make it harder for the taxpayer to get through times of depression, and send the leeches after him all the thicker in times of prosperity. People dealing with a man are entitled to know his claim to credit, in a general way; but it does not follow that the rest of the world is entitled to know: tho if they were perfectly wise and good—would not strike a man when he is down, and overcharge him when he is prosperous, there might be no objection to their knowing. But as the world is far from perfectly wise and good, considerable privacy is necessary to safety and comfort.

Yet where the good of the state is concerned, the right of privacy must give way. Sometimes even the right to life has to. But opinions differ as to whether an income-tax, rather than some other taxes, is for the good of the state. This very invasion of privacy is one of the reasons why it is not.

470 (e). Generally doubles taxation. Taxing incomes tends to double taxation and double taxation is even prohibited in some constitutions. If a man pays taxes on real estate, stock in trade, bonds, stocks, etc., and then pays again on the income they bring him, he certainly pays twice.

470 (f). As illustrating progressive taxation. It is a standard question whether, if people will tax incomes, they should bear as heavily on a little one as on a big one—tax it the same percentage. The arguments both ways are very strong. The strongest perhaps is that a man with ten thousand dollars can easier spare a given percentage—say five per cent., having ninety-five hundred dollars left, than a man with ten hundred dollars can spare five per cent., having but nine hundred and fifty left.

Yet to do as some propose—tax the big incomes so heavily as to leave all net incomes equal, would be neither practical nor just.

If a man is used to spending ten thousand a year, it would certainly be harder on him to cut his scale

down to nine hundred and fifty dollars, than it would be on the thousand-dollar man to cut his scale down to nine hundred and fifty. But then arises the question whether it *ought* to be harder, and that is too big a question to be settled here.

The next important argument in favor of a progressive income-tax is that it tends to make men stop work after they have got enough, and give young men a better chance. The whole community would benefit by that, if the older men would use their leisure for the benefit of the community, in charity and politics; but it is not at all certain that they would. If their tendency to do so is increasing, that would be an increase in the argument for a progressive income-tax. But the argument fails because it is an argument for increasing the difficulty of men reaching a competence to retire on and devote themselves to the public good: if the progressive tax would stimulate men to retire, it would to the same degree make it hard for them to get enough to retire on.

470 (g). Discrimination of sources. In some countries they do not levy the income-tax on wages or profits, but only on interest and rents; and this certainly removes the objections a stage farther off: the tax no longer obstructs earning, but only saving.

It would not be well to tax interest the same as rent (472 f), because, as population grows, and people crowd together, rents tend to increase; while as capital increases, the rate of interest tends to decrease.

There is still more to be said in favor of exempting wages and profits, and taxing rent and interest: it would tend to set men to producing, who would otherwise be living in useless indolence upon what their fathers *470 (h). As equalizing fortunes.* had made. It would also tend to equalize men's fortunes. But that is attainable, and probably desirable, only as you can equalize men. Certainly the way to attain it is not to clog the able man, but to help the weaker one. It might help him, to largely decrease his percentage of taxation if you could do so by slightly increasing the percentage

on the larger income of able men. But as nearly as we can get at the figures, there are so many more people with small incomes than with big ones, that if you wanted to halve the taxes of people with less than one thousand dollars a year, instead of increasing richer people's taxes "a slight percentage", you would have to more than double them—multiply them by about two and a half: and if you wanted to halve the taxes of people with less than four thousand dollars a year (the income that the law of 1894 tried to exempt), you would have to multiply the taxes of those with more, by about four. Mr. Godkin figured that the result of dividing all English incomes of over \$15,000 among the community at large would be that each person would be richer by about four cents a day.

470 (i). As offsetting Injustice in other taxes. A progressive income-tax could be made to offset the injustice in some other taxes—of the indirect taxes on necessities, for instance (468 a), but only very roughly. Yet, if we are to have a system of bad taxes to balance each other's badnesses, as most of the ordinary taxes—especially the duties and excises, come easier on large incomes than on small ones, a heavier tax on large incomes would tend to make things even. That may be the best we can do at this stage of evolution: and of course we have considered the progressive feature only on the assumption that we are to have an income-tax, bad or not.

470 (j). Out of proportion to state's services. Now if we have it, does the state give anything in return to justify making it progressive? No: as a man's income increases, the state does no more for him, in proportion, than it does while his income is small, but rather less in proportion. The protection of the rich man's life, liberty and pursuit of happiness really calls for less from the state than does the protection of the poor man's. The rich man lives where he is less subject to attack from violence or disease, he is less subject to persecution, and is in a better position to take care of himself in every way, than is the poor man: so the state

has to do less for him merely as a man. From this point of view, then, there is no justice in the state taxing a man more in proportion, while its service to him grows less in proportion. As already stated, the ideal is to tax *in* proportion to his ability. The attempt to tax beyond that is only one manifestation of the constant effort of those who can produce little, to get along at the expense of those who can produce much.*

This is practicable and desirable only through philanthropy, not through spoliation. We already have needed to touch that question, and will need to consider it farther, later.

Meanwhile, in spite of the arguments just given, some very good writers say that the notion that taxation should be gauged by the service rendered, is rather out of date, and they give one very good reason—that it is impossible to gauge what the state does for men: to civilized man, the state is simply a condition of existence, like air or water—in a sense, all civilized men owe it everything, and there are no degrees in everything. "In a sense", as just said, the argument is good. But it cannot upset the other side: questions of justice come in regarding even the distribution of air and water. Yet undoubtedly, a man with more money than he can reasonably use, should do more in proportion for the community, than a man who has only what he can reasonably use, or less. But justice is one thing and human charity another. If the community tries to rob the rich for the benefit of the poor, under the cover of taxation, it simply attacks whatever tendency the rich may have to give voluntarily. When one thinks of the increasing millions given year by year to charity and education—more, probably, in America than in any other country, it is easier to see how such taxation might close pocketbooks more than it would open them. As an illustrative case: when the income-tax of '94 was enacted, one of

* "The theory of progressive taxation is a vestige of the old prejudice that regarded wealth as . . . a sort of theft from the rest of the country." (Menier, quoted by Wells.)

the journals gave an instance of a benevolent man who said: "Oh well, if they want to take it by force I'll simply deduct it from my charities."

But if all taxes are, in that sense, "taken by force": why should a man propose to deduct that one from his charities, if he did not deduct others? Because that one was not levied on an even basis to all men. No one with an income of less than \$4,000 was called upon to pay it.

Yet looking at the matter solely from the standpoint of the poorer people: if through taxation they help themselves to the accumulations of the great producers, cannot they very well afford to do without their benefactions?

470 (1). Taxing away business and benevolence. Doubly No: the less secure the enterpriser is of the results of his enterprise, the more apt he is to stop producing, and stop employing labor—in other words: the more taxation attacks accumulations, the less those able to accumulate and to help other men to accumulate, will care to. We realized this principle even when we were talking of taxes laid on all alike, but of course it would be vastly more effective when taxes are laid with special force against what people can manage to do without: then the great producer would discharge his hands as soon as he had money enough.

The other consideration alluded to, against the community helping itself to the accumulations of the rich rather than waiting for their voluntary benefactions, is that it would embitter the feeling of those able to help, against those who need help; and this is destructive of the best interests of all concerned. Where willingness to help is changed into reluctance to help, and embittered reluctance at that, it is safe to say that the ablest part of the community would find plenty of ways to avoid helping. Communities who have begun to alienate their wealthy people, have found them traveling off to wiser communities, and taking their wealth with them. Ohio has not made much by driving the Standard Oil Company out of the state, or Massachusetts by driving out the headquarters of the

Bell Telephone Company. Neither has a certain Swiss canton by driving one of its wealthiest citizens to America. True, the first two of those things were not done by taxation, but by foolish legislation; it may as well have been taxation, tho, as anything else. The trouble would not stop at emigration, however, and much less at bitterness on one side: that is sure to engender bitterness on the other side; this reacts again, and so on interminably, until we reach the Roman social wars, and the French Revolution, with the destruction of everything the community values.

470 (m). Characteristic of militarism. They have progressive income-taxes in some leading European states now, and there are much more active signs of social war there than here. Those nations are full of socialism, and the only logical conclusion of socialism, if it is pushed to its logical conclusion, is, as Spencer declared, social war.

470 (n). Heaviest on those least able to bear it. The American experience is that during the civil war, the income-tax, tho clearly unconstitutional (466 e, 466 f), was religiously paid by most widows, orphans and patriots; and profanely laughed at by many other people. Perhaps half of what the law called for was paid. The tax of '94, there being no war on, was declared unconstitutional by the Supreme Court. There have been income-taxes in some of the states, of which only one or two survive as fruitless relics of an ignorant but confiding past.

As a matter of fact, among the other leading nations, income-taxes are actually associated to-day, on the whole, with the militant grade of civilization, tho Switzerland has them, and Russia and France have not. If the support of immense standing armies were not forced upon England, Germany and Italy, the income-tax would probably not be needed or tolerated by them.

In Italy the tax pays a little smaller proportion of the revenue than in England; but Italy is so poor that, just or unjust, the tax is felt to be a stern necessity. In Germany it has yielded very well, but through despotic

methods of collection that Americans would never endure. In Switzerland the Canton de Vaud has adopted it under its progressive form, and is already driving away capital and industry. It does not amount to anything in the rest of Europe. In France and Russia it does not exist as a national tax.

In England, where it works better than
470 (o). *Approved only as a necessity.* anywhere else but Germany, the income-

tax supplies only one sixth of the national revenue; and altho, the world over, people without any incomes to tax are of course fiercely agitating for income-taxes, the weight of intelligent opinion, while acknowledging their ideal justice, is against them, as practically a great injustice. Its abolition was among the unfulfilled promises of several Gladstone administrations. Gladstone, who by an unprecedented combination of economic insight, training and experience was better able to judge an income-tax than any other man who ever lived, said: "It does more than any other tax to demoralize and corrupt the people." And even his chronic opponent Disraeli agreed with him on this topic so far as to say: "The odious features of this tax cannot be modified." Thorold Rogers said: "Every chancellor of the exchequer has condemned it in principle and [from necessity] followed it in practice."

In the face of such authority, the knowledge and the motives of anybody favoring an income-tax as other than an emergency measure, can hardly both be above suspicion.

471. *Inheritance-taxes.* The same can justly be said of Inheritance-taxes. They can easily be avoided by gift before death, and even when they are not, they are not only open to all the objections against the other inquisitorial taxes—as putting premiums on lying, but, unless they are restricted to collateral inheritance, they are at the expense of the widow and the orphan at the very time they lose the husband and father whom they have depended upon to meet their expenses.

Moreover, the widows and orphans pay more than

their share of such a tax, because they are not as able liars as other inheritors—in fact they are generally represented by executors or administrators who will not lie for them at all.

But inheritance-taxes are not all imposed on the widow and orphan. Sometimes there is no immediate family to inherit, and except when collateral heirs have

*471 (a). Collateral
not very
objectionable.* been dependent on the decedent, the collateral inheritance-tax is among the less objectionable of the inquisitorial taxes.

A man is apt to feel more free with a sudden windfall than with slow and laborious gains—more apt to pay a tax on it without lying, and better able to afford it.

*471 (b). Conclu-
sions.* The entire tax, direct and collateral, never yielded much, and it is doubtful if it ever will yield enough to justify bothering the community and paying the collectors. Sometimes when a very rich man dies, the figures look large, but comparing the total with the total of taxation, they are insignificant. The New York *Evening Post* in June, 1906, said:

"Inheritance taxes are the favored remedy just now for the ills of aggregated wealth, and the Massachusetts Labor Bureau has done a timely service by bringing together in its May bulletin the facts as to the present status of the inheritance-tax in this country. Only thirteen of the States and Territories are now without a tax of some sort upon inheritances. But at present these taxes constitute neither a means for the dispersal of swollen fortunes, nor an item of much importance in the public revenues. New York State, which collected \$5,010,434 in 1905 from the estates of 5,431 decedents, stands far ahead of the rest. The only other State which receives so much as a million is Pennsylvania, with \$1,677,185 for 3,600 decedents. The whole amount collected, the country over, seems to be somewhat more than ten and one-half million dollars. So, in the collection of a tax which everybody believes in, the year's actual returns for thirty-two States and Territories would only keep New York City going for a month."

CHAPTER XL.

INQUISITORIAL DIRECT TAXES (CONTINUED).

Personal-Property Tax.

Now assuming that a man produces his own income, and reflecting that the business processes on which stamp-taxes have been collected, are also generally productive, there remains one objection common to *all* the taxes but the inheritance-tax, that we have so far considered: they are taxes on production, and therefore tend to obstruct it, and to restrict the community's prosperity.

472. Personal-property taxes. Yet instead of taxing production, to tax only property already accumulated would discourage saving, but perhaps no more than the taxes we have already considered, discourage producing; and it would not be all the time bothering people while they are trying to do their work, as do most of the taxes we have so far considered. A direct tax on accumulated property, then, would seem better than any tax that we have discussed, and in some respects it is, but we shall find some in which it certainly is not.

Then let us consider accumulated property under the usual two divisions of personality and realty.

472(a), Uncertain of diffusion. Now not all taxes on personal property are incapable of diffusion. Of course *all* taxes *tend* to diffuse themselves and become indirect: any man, whether a landlord, a money-lender, a manufacturer or a mere exchanger, will naturally charge his taxes to his customers if he can: so personal property permanently used in business (as well as that produced

to be immediately exchanged, which we have already considered) can often pass on its taxes to the consumer. A man using machinery or keeping a livery stable, for instance, can generally take the taxes on his plant into account when he fixes his prices (464-464 b). Competition will not always prevent him charging in his taxes. Some writers are very fond of reasoning that it will, but it is hard to see why competition should prevent his charging in his taxes, any more than his insurance or even his clerk-hire. So far, then, as the man paying such taxes can be like the man paying duties and excises—a sort of buffer to pass them on easily through the community, it seems eminently practicable to tax personal property.

But there are grave questions of its ideal justice. It is very apt to make the same property pay taxes twice. At first sight it seems plain that if a man enjoys a fortune in such personal property as stocks, bonds, promissory notes, mortgages, etc., he ought to contribute just as much to the government as a man with an equal fortune in real estate. But the fact is that he would contribute even if he were not directly taxed, and that if he is directly taxed, he contributes, to some extent, a second time, either for himself or somebody else: for stocks, bonds and mortgages are only bits of paper showing that a man has an interest in property that already pays taxes wherever it may be located. The property of all corporations, including, of course, their real estate, is taxed. So far, however, as earning power or "good-will" is represented in stocks and bonds (and that is sometimes very far), it is apt to be taxed but once.

Corporations generally pay taxes before declaring dividends, and therefore some states are wise and just enough not to tax stocks; and there is a growing tendency to abolish taxes on all the mere evidences of indebtedness just alluded to.

Moreover, a man owning *only* personal property, is apt to pay a real-estate tax anyhow: if he sleeps or eats

or does business under a roof, and pays for the right, he really pays part of the taxes of the men who have real estate. Unless the man who appears to pay the taxes on any building, uses it entirely himself, or it stands vacant, he does not (as we shall see later) really pay all the taxes, any more than a man who first pays a duty or an excise: the tax usually distributes itself, and is really indirect. As a rule, tenants of buildings really pay the taxes on them: so it is not true that unless they own real estate or pay personal taxes, they pay none at all. For this reason, among many others, the argument that fairness requires taxing personal property, does not amount to nearly so much as it seems.

There is still another very great danger of duplication. Everybody knows where real estate is, and there it is taxed. But there is an old principle that personal property follows the owner, which breeds a tendency to tax bonds, promissory notes and other evidences of credit at the residence of the creditor. There is a conflicting principle, however, that they should be taxed at the situation (technically the *situs*) of the property on which they are based. This often leads to their being taxed in both places. . There is a case of a Western lady in Massachusetts, cited by Wells, which covers more than one point we have been going over. She wanted to be in an educational town, and helped its tax-roll by building a fine house. Her personal property was held by a trustee in Indiana, and taxed to him there. But it appears to have consisted largely of bonds on property in another state, where it was taxed again—that being the only place where it should have been taxed at all. When she had got comfortably settled in Massachusetts, she was requested to pay a third time there—a tax on her income. She said: "This will, if enforced, be a decree of my personal banishment from the state as effectual as that which the state formerly launched against Roger Williams and the Quakers" (470 *l*, 470 *o*, 472 *d*).

472(a). Effect on prosperity. Suppose there are two townships side by side, one of which taxes personal prop-

erty, and the other does not. Other things even, the effect, as between them, will be that, as personal property—farm-tools, cattle, machinery, merchandise, of course will prefer the township where they are not taxed: one town will grow richer in personal property, and the other grow poorer (470 *l*, 470 *o*, 472 *b*). That will benefit the richer town, as far as taxes are concerned, even if personal property is not taxed, because the employment of all this personal property on the real estate, in developing farms, factories and commerce, will be an influence to make the real estate more valuable—will develop wealth that can pay more taxes. Moreover, as the chances to develop this wealth will attract more people from outside, their competition for land will also raise its price. So, for twofold reasons, the taxes can best be raised from the land, without taxing and driving away the personal property which has made the real estate valuable. The value of real estate usually depends upon bringing and using personal property upon or near it. That is true even of a mine, especially under modern conditions. You cannot work one without tools, and under modern conditions you cannot often work profitably without very good tools—chemical as well as mechanical: if you do, your competitor, who works with them, will get out more minerals for the same money, and undersell you.

But it may be asked: how can Wall Street property be valuable on this principle: there is no farming or mining or manufacturing and merchandising there? There is certainly merchandising: for the railroads and many mines and industrial establishments are sold, partly or entirely, over and over again there, every year; and if making a bankrupt affair into a paying one (or sometimes, alas! a paying one into a bankrupt one) or making a big effective concern out of several little ineffective ones—if making any of these things, is manufacturing, there is certainly manufacturing done there. Take out of Wall Street the money, shares and bonds, dealt in and reorganized there, unless you brought in some other personal property to

take their place, the real estate would not be worth as much as a poor farm of the same size, and could not pay as much in taxes.

Mr. Ensley * summed up the bearing of these facts on taxation by saying: "Never tax anything that would be of value to your State, that could and would run away, or that could and would come to you." In other words, never tax any movable property.

472 (d). Personal property hard to find or appraise. As to the practicability of collecting taxes on personal property: except machinery, merchandise and farm products, most of such property is very hard to find. Money and all sorts of securities are seldom seen by anybody but the owner.

Taxes are not paid on any bonds to speak of; a striking evidence is shown in the prices of bonds and stocks. Stocks, as said before, are not always subject to taxation, the taxes being paid by the companies before dividends are declared, while bonds are subject to a taxation which, if paid, would absorb from a third to a half of the income they yield: yet while there is a difference in the prices of stocks and bonds, there is no such difference as there would have to be if the taxes on bonds were actually paid. In other words: people owning them, do not generally confess the fact to the assessors.

Moreover, all these things are changing hands so constantly that unless an impossible army of appraisers attends to them all at the same instant, many of them must be appraised at different times in different hands.

Even if public lists of personal property could be had and kept, like those of real estate, the assessors could appraise well, only stocks and bonds sold at the exchanges, and the simplest sort of tools and produce, like the farmer's. In regard to a great factory or a great merchant's stock, or a rich man's furniture and pictures, the assessor is no judge of values. He usually tries to get at them by making the taxpayer give a list of his property and its value. The effect of this

* "What Should be Taxed, and How it Should be Taxed."

method on both honest men and rogues is almost as bad a premium on lying as the income-tax: rogues—and not very great rogues at that—evade it, and honest men have to pay the rogues' share. Nay, as already illustrated, in this regard, men honest in other regards often play the part of the rogues.

Lying is far from the only way of avoiding taxation of personal property. In the comparatively few cases where cities still try to tax it, the rich city man makes his "legal residence" at his country home, where taxes are light, and even makes that country home in some other state, if his actual state taxes personality more rigorously than some neighboring state. Corporations do likewise (470 l).

472(e). Views of authorities and operation of natural laws.

If we were to cease the folly of trying directly to tax personal property, we would not thus throw all the direct taxes upon real estate: there would still remain the other direct inquisition-taxes, and the franchise-taxes, not to speak of the indirect taxes—if we think indirect taxes better than direct taxes on personal property, incomes and inheritances; but that is very doubtful. As to franchises, we will consider them later.

The real-estate owners most given to considering such subjects—the great financiers and real-estate owners of the cities, almost all favor abolishing taxes on personal property, and this in spite of such a step tending to throw the burdens over upon real estate. Their position is that not only is the personal tax a bad tax, but that if the fifth (roughly speaking) of the total taxation which is now collected from personal property, were added to the four-fifths now collected from real estate, they would not as a rule have to pay any more than they pay now, but simply pay it all out of one pocket instead of some out of the other. The entire abolition of the personal tax is seriously proposed not only by virtually the ablest business men, but also by virtually all of the best writers and commissions.

Even the *practice* of most of the intelligent world regarding personal taxes, has come to be such that they are fast disappearing from intelligent communities. They have been abandoned in Europe, except as involved in income-taxes.

The census of 1900 gives the real property of the United States at about thirty-nine billion, and the personal at about twenty-six billion, the personal being, then, two-fifths of the whole. Real estate being so much more in evidence, this is undoubtedly an underestimate of the personality, and most of the personality is in the cities. Yet in New York, Cincinnati and San Francisco, tho probably more personal property than real estate is owned in all of them, but one-fifth of the state and local taxes is now collected from personal property. In some cities less than one-fiftieth is. In the most advanced places, no effort whatever is made to make lists of personal property, or to disprove any statement any taxpayer may make regarding it.

The latest word on the subject is the report of the New York Commission in January, 1907. It uses the following language regarding the personal-property tax:

The personal-property tax is a farce. "It falls inequitably upon the comparatively few who are caught. The burden it imposes upon production is out of all proportion to the revenue it produces. It is time the situation was faced squarely and the tax in its present form abolished.

"So far as the personal-property tax attempts to reach intangible forms of wealth, its administration is so comical as to have become a by-word. Such a method of collecting revenue would be a serious menace to democratic institutions were it not so generally recognized as a howling farce."

The Commission states that the yield of the personal-property tax in New York City is less than \$3,000,000 out of \$28,000,000, while nobody doubts that the personal property of the city exceeds in value the real estate.*

* In Connecticut from 1855 to 1885, the personal property listed for taxation fell from one-tenth of the taxable property of

The attempt to tax personal property directly, survives most actively outside of the cities, and in states that have few cities. And yet, the farmer serves his own interest very poorly by resisting the removal of the tax. He may or may not be more honest than the city dweller, but his neighbors know his affairs better,

the state to one-thirtieth. In '89 a law was passed providing that owners of securities who would register them should be taxed but one-fifth of one per cent. instead of the two and a half before levied. The first year brought out twenty-two millions that had not appeared before.

In 1866 Cincinnati paid about equally on realty and personality: in '92 realty paid three and a half times as much as personality.

In 1868 in Boston realty paid about half as much again as personality: in '90 it paid over three times as much. Of six hundred million bonds of corporations outside the state known to be held in Boston in the nineties, only forty-five million were taxed, and nearly all of that belonged to estates of widows, orphans, etc., held in trust.

In Jersey City in '92, personality paid one-thirteenth; in '70 Brooklyn reported over one-eleventh personality; in '93 little over one-thirtieth, and nearly two-thirds of that from corporations; in '93 but one and one-half per cent: was personality.

In the states of New York, Wisconsin and Georgia, the attempt to enforce the laws taxing personality is gradually being abandoned.

States with listing laws fare little if any better than states without. In 1871 California made very stringent laws taxing personal property. Some of the effects were very funny. According to the assessment reports, butter, wool and honey were no longer produced in counties full of cows, sheep and bees, nobody lent or borrowed any money, and in fact two-thirds of that previously in the state disappeared. In five years San Francisco paid on only one-third of the money and two-thirds of the other personal property that she had paid on before.

From 1885 to 1893, Ohio had a most stringent listing law, and yet the county containing Cincinnati paid less than one per cent. of its taxes on personality. In 1892 the people had \$190,000,000 in bank and listed but \$38,000,000. The counties containing the five chief cities had \$128,000,000 in bank and returned less than \$7,000,000, while the rural counties where the clamor for personal taxation is always loudest, had \$70,000,000 in bank and paid taxes on nearly half of it. This state of affairs led to the appointment of a very able commission who reported that "*the tax upon personal property makes farmers pay from*

and a larger share of his personal property is in things like crops, animals and farm machinery, which he cannot conceal or successfully underestimate. It is therefore more difficult for him to evade the tax than for his city neighbor to. In consequence statistics show

four to seven dollars where people in large cities pay one", and they called the system "a school of perjury", adding: "It imposes unjust burdens . . . upon the farmer . . . all of whose property is taxed because it is tangible; upon the man who is scrupulously honest; and upon the guardian, executor and trustee, whose accounts are matters of public record."

A tax commission of New Hampshire in 1876, after speaking of the "corrupting and demoralizing influence" of attempting to tax personal property, "frankly admit that they are unable to frame any law to which a free people would submit, or should be asked to submit, that will bring this class of property under actual assessment more effectually than it now is".

An Illinois commission in 1886 asserted that the existing system "is debauching to the conscience and subversive of the public morals—a school for perjury, promoted by law".

A Connecticut commission in 1887 reported that "the results of an investigation of nearly three years into the workings of our tax system have brought us to the conclusion that all items of intangible property ought to be struck out of the list. As the law stands it may be a burden upon the conscience of many, but it is a burden on the property of the few, not because there are few who ought to pay, but because there are few who can be made to pay".

A West Virginia commission in 1884 asserted that "the payment of the tax on personality" (in the state) "is almost as voluntary, and is considered pretty much in the same light as donations to the neighboring church or a Sunday-school".

In Massachusetts the most intelligent officials admit that their system is a comparative failure.

Wells (from whom the foregoing is condensed) calls the system one "which powerfully contributes to arrest and hinder natural development, to corrupt society, and is without a parallel in any country claiming to be civilized". And he says elsewhere: "There is not a single economist or financier of note . . . who upholds the system."

Seligman says: "In recent years in both England and France the necessity of raising increased revenue has drawn especial attention to the subject of local taxation; but in neither of these two countries has any prominent writer or speaker advocated the direct taxation of personal property, or even alluded to the subject except to scout the very idea of such a proposition."

472 (f). Showing of statistics. that in the states where the farmers have kept up active attempts to tax personal property, they generally pay most of the personal-property taxes themselves, while city people avoid them.

If the farmers did not pay personal taxes, they would have to pay more on their farms, it is true, but not as much more as they now pay in personal taxes: because the present city personal-property tax, which the farms would then help to pay, is relatively much smaller than the rural personal-property tax, which city real estate would then help to pay.

The objections to the personal-property tax are not yet understood throughout the country generally: If they were, the tax would be abolished. In many places people are still working away at all sorts of hopeless devices to get personal taxes fairly and fully paid. The favorite remedy for the difficulties of the tax, proposed by those who favor it, is one worthy of

472 (g). "Publicity" a foolish means toward a foolish end. the other features of the tax—"publicity"—the pet remedy for malfeasance in office. This is an acknowledgment that the tax does its best to make scoundrels.

This publicity is sought by putting lists of personal assessments in the newspapers. But that is the same sort of invasion of privacy that is one of the reasons against the income-tax. And it has no effect: there are too many respectable delinquents (470 c): but people who advocate foolish things, always have to carry them out by foolish methods.

472 (h). "Homogeneity" fallacy. As scorning foul blows, even against foul things, we may as well note here a fallacy regarding these inquisition-taxes which has been urged against them by high authority, and we may as well guard against weakening our case by its use. It has been urged, especially against the personal-property tax and the income-tax, that neither can be fairly laid, because personal property or income is not "homogeneous"—a jaw-breaking way of saying that the things which make up either, are not all produced in

the same way—are not of the same kind, and consequently cannot fairly be taxed in the same way (470 g). As an illustration: personal property may be, for instance, machinery, which constantly deteriorates, or interest-bearing securities which, despite occasional fluctuations, tend on the whole to advance: because as the rate of interest has been gradually decreasing, securities yielding a given rate have gradually become worth more. Income, too, may proceed from either of these sources—one much more reliable than the other, or from personal effort, which, it is contended, ought not to be taxed at all, as interest or dividends ought. The fallacy is in restricting the objection, to taxes on such things: it holds against even the land-tax itself. Land is as various as almost anything else—it is used for a million purposes, and for none at all; it deteriorates—the best tobacco lands of Cuba are exhausted, and there is no known way of restoring their peculiar virtues; it appreciates—in many a place where, fifty years ago, it could not be given away, it is now worth millions an acre. No class of subjects for taxation can be homogeneous. Taxation has to be done "by and large"—it is one of the cases where "The law cannot take note of trifles".

472 ii. Effect on corporations. Tho the world (at least the thinking part of it) admits that the taxation of individual personality is a failure and a wrong, yet when the property belongs to a corporation, many think that it can be taxed wisely. Perhaps it can be more wisely than the personal property of individuals can, altho corporations can hide their personal property, and lie about it, as easily as individuals can. But as corporations are under direct government control, appraisers can examine their books and get a knowledge of their affairs more readily than they can those of private parties: so their property can be taxed more exactly. But that it a poor reason for doing it—for putting them at a disadvantage as compared with individuals. It only affects their personal property anyhow: for

their real estate cannot be taxed more readily than anybody's else. So their case is simply one more illustration of the injustice always springing from taxing personal property.

472(j). Cause of prejudice. Much of the clamor for taxing corporations comes from the less intelligent employees of corporations—of railroads and the like, who have had strikes and similar troubles with the corporations, and so comprehend all corporations in an unreasoning hate. This rage for taxing corporations has done much harm—it has obstructed many an important enterprise, and it has even led the poor in some states to tax their own little savings in the savings-banks, because, forsooth, savings-banks are "corporations".

472(k). As affecting franchise and non-franchise corporations. Yet there is a sound basis for the demand to tax corporations, so far as the demand discriminates between corporations controlling public franchises, and those engaged in ordinary business. But of course there is no more reason for heavily taxing an ordinary business conducted by a few men incorporated, than if the same men were partners. It is true that they do get some special privileges from the state (140-140 b) and impose some little special labors upon it; but these are generally paid for by special fees, and should hardly be included among objects of taxation. But as to the franchises of corporations, we have already seen good reason for taxing them, altho they do falsely seem at first sight to be personal property, as their value is represented in bonds and stocks; moreover, as these bonds and stocks are constantly sold in public, their value is easy to get at. But getting at the real value of franchises is not as simple as it appears: doctors disagree a good deal about it, tho it can undoubtedly be done. As there is a growing tendency to grant franchises only on condition that they can be bought back by the government at a valuation, importance is to be attached to an ingenious scheme for getting at their value and at the same time ensuring their proper taxation, which has been proposed by Mayor Cutler of Rochester. It is that the

price to be paid, in case the community buys them back, shall be the sum on which they are paying taxes.

A franchise is not really personal property, even to the extent that we saw (140 c) stocks and bonds are: it is always in some way or other inseparable from the land. We will farther consider franchises then, in connection with the land, in the next chapter.

CHAPTER XLI.

OBVIOUS DIRECT TAXES.

I. *The Realty-Taxes in General.*

We seem now to have considered, and found ill suited for the purpose, every important object of taxation except the most obvious of all—the one object that cannot be hidden or carried out of jurisdiction, or successfully lied about. It is Real Estate.

^{473. Objections to} Yet there are merits of some of the other ^{Realty-taxes.} taxes which a tax on realty must lack. Real estate is more apt to lie unproductive than most other kinds of property. And moreover, a tax on it cannot have the ease of the indirect taxes, or, perhaps, stimulate saving quite as they and the other taxes on consumption do.

^{473(a). Their history.} Among primitive peoples, the realty did not pay any tax, at least directly as a tax: in fact, hardly anything like a tax had been evolved—or for that matter, anything, like what we now know as government. But in the tribal stage, there are generally contributions of produce from real estate, for the support of the chief; tho as everything is supposed to be his, such contributions are more like rent than taxes. In the communal stage, too, a share of produce has generally been collected for government, but as the land belongs to the community, this contribution, too, is rather by way of rent than tax. In the feudal stage, the sovereign still owned the land: so anything that was said on account of it, was strictly rent, tho he

devoted some of the proceeds to his wars, and perhaps to the few other matters of public interest then existing. After the nobles began to get the fee of the land, of course what the owner in fee simple (88) paid the government, he paid as taxes. Among our English ancestors, the first germ of a fee simple, was the first germ of a tax in the modern sense—when Henry II. accepted scutage in lieu of military service (56 a). On the other hand, in France, under the old régime, up to the Revolution, the nobles owned most of the land, but paid no taxes.

The actual taxation of land, then, as distinct from rent to the sovereign, certainly appears to be a comparatively modern institution. That would appear ^{473 (b). *Incidental*} to indicate that the tax on land is more ^{to high civilization.} civilized than earlier taxes, or than even the ingenious indirect taxes—especially so far as the indirect taxes were started in various countries by the representatives of the people, to get a tax that the nobles would have to pay. This must have been very often because the nobles had all the power and all the land, and would not let taxes be laid against the land. The land-tax must to that extent be a later evolution, and really one of the marks of liberty and progress.

^{473 (c). *Question of diffusion.*} Now let us see if that idea is supported by other facts. We have already said that direct taxes tend to diffuse themselves and become indirect. Of course they are least apt to diffuse themselves on the things where it is the hardest for the first payer to pass them on to somebody else; or where there is least temptation to do so. And the least temptation to try to pass them on, is of course with things whose range of prices is so great that the customer can readily avoid the tax by putting up with cheaper things. Now the one absolutely essential thing that varies most in price is land: some of it is worth nothing at all; some of it sells for hundreds of dollars a square foot.

Then if a new tax is put on land which is farmed,

473 (d). Views of economists. the old economists—Adam Smith, Ricardo, John Stuart Mill and others, said that the man occupying it would naturally seek some land cheaper by at least the amount of the tax—he might even go to land worth substantially nothing. But the new economists say that a man naturally stays at home—that

473 (e). Fact versus theory. competition between pieces of land is not perfectly fluid, but on the contrary is subject to a good deal of the friction we have spoken of before (464); that often a man would be apt to be prevented from going to a piece cheaper (by the amount of the tax) than the one he occupies, because of the expense of moving, or by already having buildings and other things to suit him, or by habit, the attraction of old associations, and a thousand other possible considerations. The idea that a man will always move where he can save money by it, presupposes, as all merely economic laws do, that the competition between the two matters in question is purely one of price. But that is not generally the case. Other considerations always come in and make more or less friction in the working of any economic law, just as they do in any physical law,—so much friction, in fact, and so many forces not counted upon, that sometimes the law does not work in its expected direction at all—or that the result may even be counter to the direction of the disturbing force under consideration, instead of the expected direction.

A striking recent illustration of how these two opposing tendencies laid our leading authorities by the ears is that Professor Seligman, intent on the tendency to free competition, says substantially, with the old economists: of course the tenant moves unless the landlord pays the tax: so the tax is not distributed, and any opinion that it is, is "so very superficial as scarcely to deserve a refutation". Mr. Wells, on the contrary, intent upon the friction that prevents free competition, says that the tenant will pay the tax for the sake of staying, and that in fact the consumer will generally pay the tax for what he wants. So Professor Seligman's expression made the disciples of Mr. Wells feel sad.

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If a tyro might venture an opinion where doctors disagree, both are right and both are wrong, as usual in such disagreements. As a matter of fact, sometimes real estate rents only for the current interest on its selling price (or less), and some rents for that interest and taxes. There is such an immense variety of land, with such an immense variety of improvements, that it is very hard to tell what it will rent for. As a matter of fact, if a man hires a room in a hotel, he need not necessarily pay his share of the landlord's taxes: the landlord may make profit enough on other items to pay the taxes himself. It will depend upon what competition he has to stand, and can stand.

Nor would it necessarily be easy for a manufacturer, for instance, staying in his old place, after a new tax is levied, to charge the tax to his customers. Some of *473 (f). Effects on producers.* his competitors would be apt to move to save the amount of the tax, and so be able to keep their prices down; and this would force those not moving to keep their prices down—in other words: to pay the tax themselves, and not try to shift it on to their customers. The manufacturers with profitable monopolies, or those able enough to produce low and make large profits, would simply have their profits diminished, but would be able to stand it. Those, whether they moved or not, not able enough to make profits in excess of the tax, would be driven out of business.

That would diminish the supply of goods, and so of course raise prices to restore the equilibrium of demand and supply (148 d, 148 e). This advance in price would of course save some producers who otherwise would be forced out of business, and would help pay the tax for all producers; and as the advanced price comes out of the community, that portion of the tax would be distributed after all.

473 (g). Stimulate production. People might work a little harder, or invention and business faculty bestir themselves a little more, to create new productions and cheapen old ones, so as to pay the tax. Such results,

especially in the way of labor-saving inventions, have sometimes followed new taxes. So far, then, as the public bestirred themselves to pay the increased prices for the productions from the taxed realty, the tax would be shifted; and the tenant, too, could deny himself and improve his methods for the sake of paying some of the tax. What was not paid by these means, the landlord would have to pay.

We will take it as proved, then, that in the general run of cases, tho a realty-tax cannot be entirely distributed, it must be to some extent. But before we pass on, let us summarize by what agencies: by the friction of moving, which will obstruct the producers saving the tax by getting cheaper quarters, and so lead them to charge it to their customers as far as they can; by the restriction of product (and consequent raising of prices) which will arise from the tax driving out of business men not able enough to save the tax by cheap production; and by stimulating the efforts and ingenuity of all concerned, consumers as well as producers, to increase their ability in order to meet the tax.

Now can realty evade its taxes, or, whether shifted or not, has *somebody* got to pay them? Real estate is, of all things, the most certain to pay its ^{473(h). Sure to be paid,} taxes. It cannot, like most personal prop-

^{erty,} be hidden when the assessor comes around; nor, if the owner does not pay, can realty, like most personal property, be sent out of reach of the collector who will want to sell it and collect the tax.

^{473(l). and easy to assess.} As to the assessor's ability to value the two kinds of property justly: many kinds of personal property are of extremely uncertain value, which cannot be determined even by the owner himself. On the other hand, realty is known and observed by the whole community, and a list of it is easily and usually kept open to everybody's criticism. In New York City, the lists are now printed, and obtainable by anybody: so, other things even, the valua-

tion put on a piece of real estate cannot often be very far from what people in general would consider fair. Even political pulls, which often wipe out a man's personal tax, cannot so readily affect his realty-tax.

*473(j). and cheap-
est to collect.* The realty-tax is much the cheapest of all taxes to collect. A large part of the expense of collecting other taxes, is in paying men to find the things taxed, and to decide what they are worth.

*473(k). All owners
must always pay
part of it.* It is worth while to reflect that if the realty-tax could entirely distribute itself, real-estate owners could not even then make other people pay it all. If each owner of realty could charge all its taxes to his tenants or customers, he would himself have to pay the charges of other real-estate owners in everything he bought, except his sea-food; and even in that, he would have to pay his share of the taxes on his fishmonger's shop.

*473(l). Summary
for and against
the real-estate tax.* To sum up the comparison of a realty-tax with the other taxes we have been considering: it does not involve double taxation, as do taxes on stocks, bonds, mortgages and other obligations; it does not tempt to concealment or evasion, as do duties, excises, income-tax, inheritance-tax and personal-property tax—all the vampire and inquisition taxes; it does not put the principal burden on the poor, as do the vampire-taxes, or put it on the honest, as do the inquisition-taxes; the property to be taxed can be more fairly valued than most other kinds, and cannot be hidden or wasted like most other kinds; the tax is sure to be collected, despite any amount of bankruptcy and dishonesty; the tax does not, like duties, excises and income-tax, discourage production; but it does discourage saving, at

*474. Real estate
under poor gov-
ernment.* least in badly-governed countries where the taxation is ruthlessly oppressive.

There, a man would at least put his savings into property that he could hide from the tax-gatherer, rather than in the kind of property that is hardest to hide. Even if that did not discourage saving

in such countries: as the savings are not put in real estate, the demand for real estate is so small that its value is low, and taxation is less fruitful in consequence. The government of many American cities—notoriously New York—has at times been so bad that many wise men hesitated to buy real estate there.

Even the real-estate tax, then, has not the merits of the indirect taxes. But indirect taxes have not the merits of the real-estate tax. The merits of the indirect taxes are only the merits of being adapted to very short-sighted people, tho perhaps most people are short-sighted. A way to combine at least some of the ease of payment of indirect taxes, with the certainty and reasonableness of real-estate taxes, is to make the latter group payable if the payer prefers, in small instalments. Something in that direction is done in some places already.

Our history contains a striking testimonial to the certainty and fairness of taking realty as the basis of taxation. In the original Articles of Confederation of the States, it was provided (and to return to the provision would probably be the greatest improvement that could be made in our policy to-day) that each state should contribute to the National treasury in proportion to the value of the land "granted to or surveyed for any person . . . and the buildings and improvements thereon". Whether the tax was to be actually raised from the land, was left to each state to determine: the Articles of Confederation only ordered it apportioned among the states according to the land and improvements. And that is what taxing real estate would substantially amount to at almost any time and place: the amount of realty a man might own would simply be an index to what taxes he should pay—an index of his *ability* to pay taxes, which modern writers all say should be the basis of taxation. But this index would of course not be perfect, neither is any other *that assessors can get at*: what they fondly assume to be his income, probably least of all. With realty as

475. Opinion of the Fathers.

an index, the owner would not necessarily pay from the income of realty, but from whatever income he might have. He might be occupying the realty himself, or it might be lying idle. Altho the provision for apportionment according to land values was not re-enacted in the Constitution, that fact does not necessarily show that the constitution-framers differed from their predecessors: for during the Revolutionary War, taxes were gathered largely from duties and excises: therefore, in the Constitution, such taxes seem to have been taken for granted as a matter of habit.

476. Equalization. One difficulty already experienced in levying a state tax on the realty of the counties separately, would have to be overcome in levying a United States tax on the realty of the several states—the very troublesome difficulty of “equalization”—that is: making each locality bear its just proportion of the general burden of the state. No such difficulty arises regarding local burdens: for the money is spent where it is raised. But when a whole state is taxed to pay for a state-house at the capital, state prison, asylums, legislature, executive, judiciary, etc., if one locality pays, say, one per cent. of its property, it is not fair that another locality should pay two per cent. This difficulty arises because the appraisers are nearly everywhere local officers, and those of each locality try to appraise low, so that their locality will be sure not to pay more than its share of state and county burdens. This is generally the reason why real estate is appraised at but a third or a half of its market value; perhaps too, it explains much indifference in “getting at” personal estate. Till lately, the chief remedy in use was to have for each county a “board of equalization”, made up of officers from various sections; but this is cumbrous and not very effective. There are quite generally laws that everything shall be appraised at its full value, but they are not usually effective either. And to have state assessors for state purposes, county assessors for county purposes,

and local assessors for local purposes—to do the work three times, would be very cumbrous and expensive.

476(a). Remedies proposed. Other remedies proposed are to have different objects taxed by the different governments. In New York there is quite a general sentiment for reserving the general property-tax (meaning real estate and personal property) especially for local use; franchises, depending on their nature, for both local and state; the inquisitorial taxes (except that on personal property)—income, succession, etc., for the state, and it has lately been decreed in some places, to reserve taxation on mortgages for the state. Excise and duties are already virtually for the nation. At present, the thing tends to work itself out as indicated, but making the personal-property tax local, and reserving the other bad taxes for the state and nation, does not make any of them good taxes, or promote broad patriotism..

I said "at present" because many people think there is a growing tendency in people's minds, as there certainly is in natural law, for all inquisition and vampire taxes to disappear (468 e). But if they ever do, it will be a long time hence, and would involve amendments to the constitutions of most of the states, and (for national taxes) of the United States (466 o): those constitutions require taxation of all "property". But if the bad taxes disappear, the equalization difficulty would settle itself: assessment for all the governments could be done by the national officials, who could be appointed by the central authority, instead of depending on votes, and so being subject to local bias.

A simpler way of equalization, and a very promising one, was lately enacted in Connecticut. It makes each locality responsible for state taxes in proportion to the amount raised for local taxes. This not only removes the temptations to wrong assessments, but also promotes local economy.

One consequence of assessors not wanting to alienate the voters, is that they generally assess the property of non-residents too high. This is guarded against in

England by permitting a man to vote in all places where he owns property. There are many other reasons for this—more, apparently, than against it.

II. *Varieties of Realty-Taxes.*

So far, we have discussed merely the general topic of taxing real estate. But there are several ways of doing it. The principal ones that our people now have under consideration, we may say amount to four.

477. Realty-tax, Single Tax, Separated Tax, Appropriation-tax. First is the general present method of taxing all the realty—land and improvements, without regard to whether other things are taxed or not. This we can properly call *realty-tax*. Then there is a second proposition, supplementary to the first, that there shall be only one single tax levied, and that that shall be on realty (including, if we please, the land devoted to the operation of franchises). This is the proper “*single tax*”, and we would better reserve the name for it. Then, third, is the proposition that the land shall be taxed separately from the improvements; this and each of several others have been called *single tax*: so to distinguish, perhaps we would better call this the *separated tax*. Then the fourth proposition, which may be applied to any one of the preceding three, is to tax all the value of the realty away—virtually to appropriate all the land for public use. This also has been called *single tax*, but as that term has lost meaning by being applied to so many things, we may as well call this one *appropriation-tax*.

As we have considered the first—the realty-tax in general, let us go on to consider the three proposed modifications of it.

Henry George was by no means the first to advocate that it should be a single tax. As early as the close of the seventeenth century, John Locke *478. The Single Tax. (a). Locke's theory.* taught that all taxes ultimately were distributed, and gravitated to the land, and

might as well be put there in one single tax, as by a troublesome and expensive indirection. Nearly a hundred years later, his ideas were taken up by the physiocrats, and they have had many advocates since.

Of any attempted tax on commodities, Locke said: "The merchant will not bear it, the laborer cannot, and therefore the landlord must." The fallacies in this reasoning, as regards the merchant, are that the merchant often *will* bear it, at least in part, as a matter of competition, and also when an even price is usual and important, and when the tax is too small to justify going to a higher price (464). As regards the laborer: by the laborer, Locke apparently meant the producer, as distinct from the exchanger (whom he called the merchant). Now the producer includes not only the laborer, but the enterpriser and the capitalist: these latter people certainly *can* bear the tax; and even the laborer (at least in our day, if not in Locke's) certainly can bear some of it, and does in excises, tariffs, and rent.

Locke's opinion remained undisputed, 478(b). *Walpole's*. however, until Sir Robert Walpole, about 1733, wanted to increase customs duties. Then he took ground just the opposite of Locke's: among his arguments was that the duties were no harder on people in general than a land-tax, because consumers of all commodities have to pay the land-taxes. The reasoning was that, as everything people want comes from the ground, the landlord can make all who use anything pay his taxes.

This reasoning was full of fallacies. In the first place, it is no more the entire truth that everything that people want comes from the ground, than it is that everything is made by Labor with a big L. Either statement ignores what value is added to raw material or to big-L-Labor by the labor (with a small l) of a Vanderbilt, or an Edison, or a Michelangelo.

But after we recognize the enormous increases of value effected by Ability (or labor with a small l, if you prefer), Walpole is not right, even then: people can decline to use some of the things at the enhanced price

that the landowner's taxes would impose: so he will have to pay at least that portion himself until, and unless, it finds its way to other things.

478(c). Diffusion on different grades of property. On this principle, if a man is rich and wants to live on Fifth Avenue, and is ready to pay for it, he is not apt to go anywhere else to save taxes. On the other hand, if a man is poor and wants a farm, he may be forced to go down a grade for the sake of saving taxes.

The rule in regard to the distribution of real-estate taxes, seems, then, to be that fancy property, for which people are ready to pay fancy prices, probably can shift its taxes much more readily among such people, than can other property among people who seek it largely with an eye to economy—except of course such people as have already touched bottom—and cannot find any property poorer than they have.

We saw something like this before (464)—that a tax can be shifted most readily upon those who *will* have, and those who *must* have. So the realty-tax, while desirable on the whole, is probably harder on average property, than on the best and the worst. And there is no doubt that under the single tax, agricultural land would, on the whole, be at a disadvantage as compared with city land: for city land has the monopoly value of a spot favored by situation and connections, while agricultural land, except for the local truck-garden, poultry and dairy business, is more nearly in competition with all the land in the world.

It is important to note, however, that the worst property in cities is not generally owned by the poor. The rich generally own large quantities of it, and rent it to the poor at higher rates, in proportion to its value, than they can get for better property: that fact of course adds force to the theory that its taxes are shifted. On the other hand, in a country township, probably the taxes on the farms and ordinary houses could not distribute themselves, while if it happened to be a favorable region for hotels and summer-villas; probably the taxes on them *could* distribute themselves, at least

so far as to the tenants. Nevertheless in such a neighborhood, the majority of voters would probably be short-sighted enough to oppose the single tax on real estate, and try to tax also the stocks, bonds and mortgages held by such of the villa residents as voted there. In short, the position would be just the reverse of the city. The single tax would *not* be so desirable on the whole, and yet its absence would be harder on the holders of the superior property—even tho that is the very property that would have most of the tax to pay, if it were enacted.

478 (d). Local option in taxation. Because of these differences and paradoxes, it has been wisely proposed to let each local government—village, township or city, settle its own method of taxation—to have “local option” in taxation.

This certainly would be wiser than having each legislature pass uniform laws for the entire state, even if they would do so in accord with the ideas of the most intelligent people. But at best, taking the “ideas of the most intelligent people” is something that legislatures are nearly certain not to do; and the question is too new for the most intelligent people to be sure that any one scheme would work well in all places. Some great cities, and perhaps some great states, have, it is true, virtually been brought under the single tax by the pure operation of natural laws (472 e, 472 f), but it is too early, without farther experiment, to say what is best at this stage of evolution, for the rural regions generally.

The fact is that Nature and human nature determine a great many questions before legislatures get their eyes open to them, and often contrary to what legislatures are able to see. Local option in taxation, for instance, is already in quite frequent operation, while very few people realize that it is, and while the letter of the law is against it. Despite the laws taxing personal property, in practice New York City exempts at least four fifths of its personal property. And in cities

generally, a much smaller proportion of personal property is taxed than in the country—sometimes less than two per cent. In the township of Fulton lately, two assessors levied outside of the village, and one in the village. Those outside listed all the pianos, guns and even fishpoles; while the one in the village did not (officially) find a gun or a piano there. When it comes, as it certainly will, to legalizing such local option, the best opinion is not in favor of permitting localities directly to create their own systems of taxation: for generally they would do it worse than even the legislatures. But it seems wise to enable them to give the sanction of law, with its regularity and consistency, to the exemptions which they already know all about, and practice with unjust irregularity.

478(e). Effect of single tax suddenly imposed.

It is important to try to determine what would be the effect on landowners of suddenly stopping all other taxes, and coming to a single tax on real estate. As a realty-tax can only partially distribute itself, at first sight it seems as if all landlords would at once be made poorer by the undistributed portion of the tax. At second sight, so far as stocks represent shares in landed property, that sort of personal property would have to pay in either case: because the profits from which the dividends are paid, would be lessened by the amount of the tax. But other forms of personal property would not have to pay: so realty-owners might not have to pay materially more than they now pay (472 e). But to take a third sight, the realty-owners really pay pretty nearly all now. As a rule (tho there are many exceptions), people who own the realty, own pretty much everything else. As nearly as we can tell, nine tenths of the personal property taxed, is owned by those who own the land: so the change would mainly be paying to Peter what is now paid to Paul, less the expense of employing Paul to collect it. And Paul costs an enormous deal that would then be saved—not only the whole custom-house system, and most of the tax-machinery—national, state

and local, but also whatever the middleman's profits may be (464), and the waste there certainly is, on all the indirect taxes.

Taxation, as we have seen, is really already restricted to real estate, to a degree that very few people begin to dream. Yet some people reason that if it were suddenly nominally restricted to real estate, there would be a great rush to sell real estate, and prices would have to fall fearfully to restore the equation of supply and demand (148 d). It certainly has not worked that way where real estate has been *gradually* becoming the principal object of taxation, as it has in nearly all advanced communities. But if the shifting of taxes to real estate were hastened by a *sudden* enactment, there might be a panic, tho as real-estate owners are of the most intelligent and instructed classes, they probably would realize all we have been considering, and, if some forced sales, others would be glad to pick up the bargains and sustain the market.

To propose the single tax, then, is not to propose a revolution, but merely to recognize and promote an evolution that in the most advanced communities is already nearly accomplished, and can be fully accomplished without any serious disturbance.

478 (f). *Experi-*

The single tax has been tried in Australasia, and they have even gone as far as the separated tax: and, as already said (472 e), the single tax has been tried approximately in New York and many other places. As already intimated, the people, in many of our cities at least, like it as far as they have approximated to it, and the Australasians find it very satisfactory. Yet the fact that it seems to be liked so far as tried, does not necessarily prove that it would be liked everywhere: it may prove only that it has been tried where conditions are favorable to it, and that where it has not been tried, conditions are not favorable. In spite of its being popular in the cities, our people *away* from the cities do not even comprehend it. The farmer thinks first of his land,

and not of his cattle, crops, machinery, and tools; and he thinks, often wrongly, that if all taxes were collected from the land, his share would be increased. The way of reconciling these different opinions is by local option.

It is not universally proposed in our day by the advocates of the single tax, that the tax should cover *all* the real estate. Some favor what we have agreed to call the "separated" tax, on the land alone, and not on improvements, because taxing improvements discourages people from making them—from building, draining, etc. It is for the interest of the whole community that all reasonable improvements should be made, and yet a man must risk getting from a quarter to a third more gross income out of a building, if it is taxed, than if it is not.

New York City has taken the first step toward the separated tax by appraising (tho not yet taxing) land and improvements separately.

Under a system drawing all the taxes from the land, in many cases the separated tax would be more than a mere suggestive stimulus to improvement: for in some cases it would almost force people to put up more buildings, so as to get revenue from the buildings to pay the increased taxes on the land. But some time back (470 a) it was said that that was a stupid scheme, because the money would have to come from other investments proved better by the fact of the money being in them. This fact prevents unimproved real estate being the best possible object of taxation: for it could not always find capital for improvements. In other words, some unimproved real estate is useless, and should not be taxed. It is one thing to encourage possible improvement, but another to demand more improvement than could pay, and punish the landlord for not making it. Unimproved land, even when worth improving, is not as apt to rent for interest and taxes, as improved land, because taxes on buildings are more apt than those on

479. Separated tax
on land exclusive
of improvements.

479 (a). Buildings diffuse taxes more readily than land. the land, to diffuse themselves: a tenant can easily find cheaper land, but cannot nearly as easily find a cheaper or more suitable building: buildings for a given purpose do not vary in price nearly as much as land, and the building generally costs much more than the land, tho not always in big cities or on favorable corners.

Roughly speaking, the taxes on buildings used in production, are paid by the consumer of the goods produced, because manufacturers cannot compete with each other very much in expense of buildings, and therefore (roughly speaking always) must charge new building taxes to their customers, or get along with less profit, or (if they cannot do that) relinquish business.

Now it certainly does look as if a large portion of real-estate taxes must be diffused to tenants and their customers. But suppose the buildings were for the owner's occupancy only, relieving them from taxation would

479 (b). Nevertheless separated tax encourages improvement. give still more encouragement to build (or, rather, less discouragement) than now.

Personal occupancy under the separated tax, is, in fact, the strongest case in favor of building: because if the building were taxed and used unproductively—as a home, for instance, by the owner—he could not distribute the tax: therefore relieving him of the tax would be a special encouragement to build a home—a very desirable thing for hosts of reasons. The capital for increased house-building could well be diverted from less desirable investments; and so far as it might be borrowed, there is nothing that encourages saving among people in general, like the desire to pay such a debt, and own one's home free from it.

Another argument for the separated tax is that, as the land is made already, the separated tax cannot discourage making it; but improvements in a sense really do make it—that is, they add to the value of the land itself as distinct from the improvements—sometimes almost create the value. So to exempt the improvements from taxation would help to add value to the land.

But it is a question, already touched on, whether, if the tax were taken off from buildings, those who own land alone without improvements, could stand adding the tax to the land. This is a different question from that of taking all taxes off personality and putting them on realty. In communities where land can be had for the asking, taxes taken off buildings and distributed over all the land would have to be paid disproportionately by the poor: for in such communities, much of the wealth is in buildings, and to exempt them would increase the taxes on unused land. On the other hand, if, instead of taking off taxes from buildings and improvements, they were taken off personality, the owners of unused land could devote the saving to its taxes or improvement.

480. Appropriation-tax.

Now we come to the appropriation-tax. As to its morality: so far as the tax cannot be diffused, it must rob all present holders of their land. That was considered when we discussed property rights (66-75).

Considering that question settled, then, if such a tax produced more money than government needed, it would be regrettable, as it would encourage wasteful legislation. That could not be cured by lowering the rate, without the tax ceasing to be an appropriation-tax.

But if tax of the entire rental value does produce an excess, it is proposed by the advocates of the tax to devote the surplus to public works, and give it to the poor. When we discussed government's promotion of convenience, we seemed to see good reason to believe that if superfluous money were devoted to public works, it would be mainly wasted; and to give it to the poor, would, as history proves, simply increase the number of the poor (47): receiving money that is not earned, makes people slow to earn any. The state takes care of the incapable already. To take care of the capable would tend to make them incapable. But aside from all this, while the state has a right to take money for its general purposes—which benefit those from

whom it takes the money, as well as the rest of the community—to take money from one man to give it to another who can support himself if he must, is robbery.

As to taxing what is called the unearned increment of land, we considered that too when we were discussing the general question of rights of private property in land (74, 74 a).

The appropriation-tax, then, seems to merit no further discussion.

III. *Rental-Value Tax.*

Some time back (475), we spoke of the Articles of Confederation making real estate, irrespective of its own immediate product, a guide or index to the amount of taxes that should be paid. There is also another connection in which it has so served—as a guide in taxing consumption,

<sup>481. Rental-value
Tax is on con-
sumption.</sup> through a tax on the rental value of the taxpayer's dwelling, the tax to be paid by the occupant, whether he owns the dwelling or rents it. This tax has been approved because a man's dwelling is, despite many exceptions, a very fair guide to his rate of expenditure, as well as to his taxable ability. Such a tax on what a man consumes, encourages saving, as already said. Moreover, his rental valuation can be fairly fixed, and cannot be concealed or effectively lied about: therefore the tax offers no premium on dishonesty, as do all the other taxes on consumption that we have considered.

<sup>481(a). Not a real-
estate tax.</sup> The rental-value tax is not really a real-estate tax. If a man paid the usual realty-tax on a house and lot, and rented it for a residence to another man who paid the rental-value tax we have been talking about, the government could not be considered as collecting twice on the property: for the tenant's rental-value tax is not put on the property, as the property cannot be sold to collect it. The rental-value tax is really a personal tax, the amount of which is determined by the payer's rental, and is really intended to tax his general expenditure. Yet a New

York commission in 1907 reported in favor of making it a lien on the property!

If the owner himself lives on the property, then the property can be sold to pay his rental-value tax, but only as any other property—even personal property—could be sold to pay any tax levied on him. There is no reason why the particular piece he lives on, rather than any other piece he may own, should be sold to pay his rental-value tax or any other personal tax: therefore *481(b), Not double taxation.* the rental-value tax is not a duplicate tax

on the dwelling, any more than any part of a man's property is a double tax on the rest: all his property is subject to sale for any one of his taxes, if the part on which that one is levied does not yield it.

It has been objected that, for instance, a rich bachelor living in a hall bedroom should be taxed in something more than rental value of his dwelling. His real estate will be taxed, of course, but beyond that, it is clear that attempting to get at exceptional and abnormal cases does not pay for the trouble. A rich man living meanly would be almost sure to conceal all of his wealth that he could, and not unlikely to lie about it.

But suppose a man lives in two houses at different seasons, as so many people do now, or even three or four: it is a question whether his rental-value tax should be gauged by the one where he votes from, or whether he should pay a rental-value tax on all. Of course he would be apt to vote from the cheapest, and a man ought to be willing to pay for his luxuries. But a family does not use materially more in the way of clothes, food

481(a). Should be on one residence only. and drink, jewelry, or hosts of other things, for having three or four houses, than for having one; and not only are country

houses good things for keeping great producers up to the best working condition, but it is a good thing for country regions that people who make money in the cities, should spend some of it in the country. City people owning country houses should pay for the luxury, but not pay unduly, so as to discourage a practice so much for the general good.

It is an interesting and instructive question whether the rental-value tax would be shifted. A man looking for a house would certainly be apt to say to a landlord: "If I live in this house, I must pay such and such a rental-tax. I won't take it unless you deduct that."

481(d). Shifting. Then the landlord might say: "I must wait for another customer." In fact, it would be a case of demand and supply; if houses were plenty and tenants scarce, it would go one way; if tenants were plenty and houses scarce, it would go the other way. The tenant has to pay the tax, and the question of his getting a house high or low is an outside question, just as it is outside of whatever gas-bill or coal-bill may be involved in running the same house. The authorities seem at last agreed on this: there has been a good deal of fog over it, but it is pretty well cleared up now.

The rental-value tax seems to have all the merits we have sought for in a tax, and none of the defects we have found. It is also a good one in practice: wherever tried (probably longest and widest in England) it has done very well.

IV. *Franchise-Tax.*

482. Has the characteristics of a real-estate tax.

Now we have left to the last, the consideration of one class of objects of taxation—franchises, which we briefly commended many pages back: we saw (159 b, 159 c) that they are peculiarly just objects of taxation, because they are usually, in their very nature, really public property; and in getting all they yield beyond a reasonable profit to their promoters, the public is usually but getting its own.

Our general study has shown us still more reasons why franchises are good objects of taxation: they cannot be hidden or lied about as successfully as most personal property, or as incomes and inheritances: for there are so few of them that it would cost government very little thoroughly to investigate their accounts. True, the managers of franchises spend a great

deal in corrupting public officers, but probably no amount of taxation could make them spend much more in that way than they do now.

The verdict of experience regarding taxing them is that it is done in most countries where universal suffrage does not provide legislatures that the corporations can buy; and it is found to be in all respects a good tax. The tendency to use it is increasing rapidly.

A franchise-tax is a real-estate tax after all, and has all the merits of one. The New York legislature so decreed in 1890, and it is plainly so if we take into consideration the special value of the real estate for the purpose of the franchise. But of course it would not do to tax a railroad's long line as if it were to be used for farming: or the long strip occupied by a gas-pipe, as if it were to be used to build a house on: each gets its value, just as other real estate does, from the size, shape and location that fit it for its purpose: it would not do to tax a Wall Street corner according to its value for residence purposes, or a Fifth Avenue lot according to its value for stockbrokers' offices, or either for its value for farming; any more than it would do to tax a farm for its value for building jewelry-stores.

In fact, then, the chief value of a franchise consists in its ownership of its peculiar real estate, or of peculiar privileges connected with peculiar real estate.

No matter what the shape of the real estate used, may be, it is generally more valuable *for its purposes*, than all the rest of the corporation's property. As Mr. Shearman points out, as soon as a street railroad gets its franchise, it generally bonds it for many times what its rails and rolling-stock cost. So it is with gas-lines and water-lines and franchises generally.

CHAPTER XLII.

DOUBLE TAXATION.

483. Taxation of mortgages. Suppose a real-estate owner gives a mortgage. Should government tax the mortgage in the hands of the man who holds it?

483(a). Mortgage a debt, not a value, Plainly not, if government continues to tax the land its full amount: the mortgage created no new value, and for this reason, New Jersey, Idaho and probably some other states exempt mortgages altogether, and New York has just passed a law imposing on them only a small recording tax. If the government taxes the mortgage, and taxes the land as much as before, it taxes on more value than before, without there being any new value to pay the tax; in other words, it would be taxing some of the old value twice, which, in several states, is unconstitutional.

At first glance it appears that the land is not worth to its owner as much as before, but it really is, unless and until it is foreclosed: he still retains the use and income of it, and therefore is in as good condition, so far as concerns the land, to pay the tax as he was before mortgaging.

But now he has to pay the interest on his mortgage too. But also the mortgage has brought him the money to earn that interest, and, he thinks, a profit besides, or he would not have made the mortgage.

Then he should pay taxes on the money too, if the money is taxed: he alone has it in possession and use to earn the taxes with. He has in possession and

use all the real estate and all the money, and of course should pay all the taxes.

483 (b). and value alone should be taxed. The very bottom principle of sound taxation, is that the taxes shall be paid by the person holding the property which produces the wherewithal to pay them. That is really "taxing at the source".

We seem to have made out that the mortgagor has everything concerned, and such is the case. The mortgagee has nothing but a claim. He cannot earn anything to pay taxes with that. He has parted with his money, and it is the business of the man who has that, to make it earn its taxes, as well as its interest.

But here is the mortgagee in receipt of an income. Should not he pay taxes on that? The question depends upon whether the source of the income has already paid its taxes (470 e). We have just seen that it ought to, as everything that pays taxes ought to, through the party that makes it earn them—"at the source".

But suppose the mortgagee is taxed, as he very often is, who should pay the tax?

It is perfectly plain that *nobody* should. But where somebody is made to, the question of who, is generally made as broad as it is long, because *483 (c), Mortgagor generally pays tax Indirectly.*

The mortgagor generally has to pay the mortgagee a rate high enough to cover ordinary interest plus the tax. Mortgagors have to pay six per cent. in Vermont, where mortgages are taxed, while, till lately, they have had to pay but four or five in New York, where the law taxing mortgages was a dead letter. There was a new enactment in 1905, however, which wrought great hardship and obstructed improvement, and, as already said, it was repealed in 1905. Mortgage taxation is sometimes called "as broad as it is long", but it is more than that: for in Vermont, California and other states where mortgages are taxed, the mortgagor, theoretically at least, has to pay not only his high

interest, but also on the full valuation of the real estate, just as before the mortgage, and yet again on the money in his hands, or on whatever he may have invested it in. But the number of states where that occurs is diminishing: for the victims of course take part in the general evasion of personal-property taxes, and people are becoming alive to the injustice of it. Hence, more and more of the states which tax mortgages, are deducting them from the valuation of real estate.

*483(d). Mortgage
not properly Real
Estate.* Some people are deceived by the reasoning that a mortgage is an interest in real estate, and fairly taxable as real estate, and in fact, mortgages and real estate have logically and historically (83) enough features in common to deceive a good many persons. But as long as the mortgagor is in possession, the mortgage is only a right to acquire an interest in the real estate if the loan is not paid.

*483(e). In differ-
ent states.* It sometimes happens that a man living in a state where personal property is taxed, owns a mortgage on a piece of property in another state—it may be on a piece of private property, or it may be the bond of a corporation, and the mortgage is taxed in the state where the property is; and suppose that the owner of the mortgage, living in a different state, is also taxed on it as personal property. Some help for this state of affairs may have been recently given by the United States Supreme Court in holding that a state can tax only property, business and persons within its borders. Yet the first state can hold that the mortgage is within its borders, and the second state can hold that the man is within its. More help is in people gradually realizing that as long as a state looks for revenue from all personal property owned by its residents, no matter where situated, victims of such laws are apt to move to more modern states. It is perhaps as much to save money as to spend it, that so many millionaires from all over the country move to the city of New York, where, despite the law which works the most outrageous

injustices on women and children, there is really little taxation of personal property in the hands of men who can take care of themselves.

Of course if a man owns mortgages in California, and likes to enjoy his wealth in New York, he should pay taxes there for the privilege; and he cannot avoid paying. Taxes on most things he buys, and on the stores they come from, will inevitably be shifted to him, as is proved by the high prices of everything in New York. Of course he could also be made to pay rental-value tax, if New York were yet wise enough to use that tax. We saw something like this when we were discussing indirect taxes on personality (464)—that a tax can be shifted most readily upon those who will have, and those who must have.

If a man in a state where personal property is taxed, owns stock of a bank in another state, he is apt to have to pay on it twice: the bank pays once, and he often pays again.

It is plain how a state can collect taxes from resident corporations, but it is not so plain how it can collect on a mortgage when the mortgagee lives in another state: for he does not own the land. As already explained, it is unscientific as well as unjust, to collect on it at all, but if the blunder is made, the state can collect on the mortgage just as it collects on the fee simple (88) of the same land when the owner lives in another state. But if it collects taxes on the mortgage by selling the land, it would compel the mortgagor to pay the mortgagee's taxes or lose his own equity of redemption (83). That is remedied, in Massachusetts, California, Colorado and New Zealand—

*483(f). Letting
mortgagor pay
mortgagee's tax.* by letting the mortgagor pay any taxes outstanding when his interest is due, and deduct them from the interest. Altho, as said above, he would have to pay a rate of interest high enough to cover those taxes; at worst, if the system were made consistent all around, by taxing the mortgage value but once, he would not have to pay,

as he sometimes does now, on the mortgage, on the money in his hands, and on the full fee of his farm, but only on the equity of redemption.

483(g), Conclusion. Our conclusion, then, is that if the holder of land owes a debt which can be definitely collected from that land, he should pay the full taxes as long as he has the use of it. If the creditor is taxed on the claim, the debtor will generally have to pay that tax too, in which case his land should be exempted from payment, to the amount which is the subject of the claim. Hence, until the world outgrows the taxation of personal property, the simplest way with mortgaged property, is to have the mortgagor pay only on his equity of redemption. It might be more logical to offset the mortgage debt against his personal property—against the mortgage money which he received, but he may not have any personal property: he may have borrowed the mortgage money to pay a debt, or may have invested it in more real estate, or may have made ducks and drakes with it.

But as affecting the ability of the landowner to pay the tax, why should we exempt him if his liability is on a mortgage, and not exempt him if his liability is on a mere note? A good many states deduct *all* debts from personality assessed. But if they do not, they have "got to draw the line somewhere". A good place to draw it, is at what is so definitely a man's that he can sell it. If his land is mortgaged, he can sell only the equity. If it is not mortgaged, he can sell the whole of it, regardless of his creditors, tho he may owe fifty times what it will bring. If all of A's property is a piece of real estate, and B holds A's note, but not a mortgage, that note can be collected by a forced sale of the real estate, just as a mortgage could, but it is not so sure an interest in the real estate: because if it

484. Why tax mortgages and not notes? were a first mortgage, it would be as good as an actual ownership of the land, against all other possible creditors, and would probably be worth its face; but if it is a mere note, forty-nine other creditors might have just as much

interest in the real estate, and not one of the whole fifty be able to get five per cent. on his claim.

Yet there is no subject in taxation about which there has been more quarreling and more diverse practice. As already said, some states, in making up tax-schedules, permit the deduction of all a man's debts from all his personal property, but all collect rigidly on the full value of his real estate, whether mortgaged or not; Massachusetts allows no deduction of debts from personal property, but does not tax mortgages twice.

And there is reason for not exempting debts, beyond the necessity of "drawing a line somewhere". In the states where debts are exempted, it is astounding how many debts in proportion to their assets, some of the financial magnates have about listing time, while widows and orphans often have no debts at all.

485. Tax all record-liens "at the source", and deduct them from value of property. There is a very simple principle which would reduce this chaos to uniformity, without going to the length of the single tax—a way short of driving taxpayers into a modern state to get rid of these old-fashioned double taxations. It is to become a modern state, and tax only what is of record, and tax it against the recorded owner. This is one application of the celebrated maxim to "tax at the source". Then, if the thing taxed is a lien on any property, of course that property should be *pro tanto* exempt. But the question would be avoided by not taxing liens.

486. Multiplied taxation, especially by excises. Probably the most general form of taxation, especially multiplied taxation, is the excises on manufactured articles. Raw materials are often taxed, and then the goods taxed again in each set of hands they pass through: for instance, trees may be taxed as standing timber, as logs, as planks, as strips for making spools or awl-handles, and as spools or awl-handles. Iron may be taxed as ore in the bed, as ore at the furnace, as pig, as bar, as extra-tempered fine small steel, as jackknives, or as watch-springs, and in each one of these forms, after being taxed at the

factory, it may be taxed again in wholesalers' hands, again in retailers' hands, and again in consumers' hands. Moreover, should it stay in any of these hands over a year, it may be taxed again, and in consumers' hands taxed every year till it rusts. Verily, manifold are the ways of taxation of personal property! As long as "mankind is a fool" (to quote Carlyle)—or at least American mankind (no other civilized mankind is enough of a fool to attempt the direct taxation of personal property), the only remedy is to "tax at the source"—tax it at the factory, and then stop.

But *what* factory—logging-camp, sawmill, turning-mill, spool-factory, or where? At each one, if you want to: each one adds a new value beside which the old value is often not worth considering. But do not tax the completed product again in the hands of dealers or users. If the tax on iron-ore is paid over again in a watch-spring; or that on logs, in a spool, the amount of material is so trifling that it makes no appreciable difference. It is only in connection with the duplication up to the finished product, which *is* serious, that this sort of tax is generally worth noticing.

Not all cases of duplicated or multiplied taxation are equally objectionable with those we have considered; some are even generally approved—such, for instance, as taxes on things that people are in danger of using too much of, like liquors and tobacco. There are generally excises on their production, and duties on their importation, and additional taxes on dealing in them. There is still another justification for this sort of duplicated taxation, that there is not for taxing mortgages. The excise-taxes quite generally distribute themselves, while those on real estate, whether on fee or on the mere possibility of an estate, which is secured by a mortgage, may not distribute themselves as readily.

CHAPTER XLIII.

SUMMARY AND CONCLUSIONS ON TAXATION.

Now among the various kinds of taxation that we have considered, with the glaring objections to the worst, and the perplexities, inconsistencies and occasional injustices of even the best, certainly there is not one alone which can be depended upon, at least until 487. *Perfect taxation not for imperfect people.* human nature improves. Taxation is after all mainly a matter of psychology: it must be adapted to the people. Sources of revenue run all the way from lotteries to land—the semi-barbarian at one end, and a civilization not yet fully realized at the other. A wise system of taxation must consider the weaknesses of human nature, and also the various complexities arising from the fact that men often own property under governments different from those they live under.

488. *Vampire-taxes needed now.* As duties and excises distribute themselves so generally, and are paid with so little inconvenience, it is generally necessary, in the present state of human nature, to use them. But they should be used with great simplicity, to save expense in assessing and collecting; with great caution against corruption by interests seeking "protection"; and mainly on luxuries, so that the poor man will not be paying taxes on everything he buys. Yet it is eminently

488(a). *The Rent-value Tax may ultimately replace them.* desirable that the poor man have an interest in keeping taxes low, and such interest is not kept very wide awake by a vampire-tax: one object of such a tax is

to keep the interest asleep—its “pinions fan the wound it makes”.

Yet of course it is not desirable to take away the vampire-taxes, and depend on others that are even worse: a small minority of citizens have any real estate; and income, succession or personal-property taxes are poor substitutes for even vampire-taxes: the fire is worse than the frying-pan, as remarked at least once before in these discussions. But if a man does not own real estate, he pays rent, and the rental-value tax will keep him much more alive to his political duties than the vampire-taxes can, besides being a better tax in every other way.

Until we are educated up to doing without the vampire-taxes, we can learn from England in using them. She selects a few articles—mainly luxuries on which people will readily pay most, and confines the duties and excises to them; and it works very well. The trouble is that the number of duties and excises cannot be *kept* small: all interests clamor for protection in the tariff; and in every exigency, a finance minister (in a country civilized enough to have one: we are not) tends to clap on a new excise. One cannot read far into the subject without meeting the Dutchman's thirty taxes in a plate of soup. Yet there has been some improvement since his day, in countries like England, where legislators are generally chosen from the educated classes, and have read the world's experience.

Except in young countries, or in tariff wars, the tariff should be only on articles that cannot be produced at home: this prevents a number of interests from corrupting legislation, and trading “protection” with each other.

489. Inquisition-taxes Intolerable. In spite of the possible necessity of tolerating indirect taxes because of the weaknesses of human nature, tariff-taxes and excise-taxes have not only the faults of the vampire-taxes, but those of the inquisition-taxes too; and when duties become “protective”, they become oppressive in the bargain. Protection is the very worst form of taxa-

tion. While income, inheritance and personal-property taxes are thoroughly inquisitorial, corrupting and impracticable, yield relatively little, cost much to collect, and so should never be used except in dire necessity, if, then, they are nevertheless better than protective taxes.

490. The remote
Ideal.

Now after making all these concessions to the hard facts of human nature, let us seek a little glimpse of the ideal—of what may ultimately come, as human nature improves. We have seen that Evolution seems to tend to establish, to the exclusion of others, taxes on the land, including those on franchises. If land should be taxed more than other things, the tax would be paid from the rent and the profits of managing the labor upon it, not from the wages of the labor: wages must be kept up to the market rate, or labor would not go upon the land: so must the profits of ability, for the same reason. If the tax were so heavy as to eat into wages and profits, the land would be abandoned unless the taxes were lowered. The taxes, then, must, in the long run, come out of the rent. Now we have seen that the rent comes from the bounty of Nature—from sufficient fertility, or special fitness for other use, to give a return above wages and profits. Then, in the very last resort, the bounty of Nature pays the tax on land.

490 (a). *Nature pays some taxes.* A franchise-tax is paid by something very like the same thing. As we have already seen, the value of a franchise is mainly in its real estate; and anyhow, whatever an enterprise pays above wages and ordinary profits, must in the long run come from some unusual advantage that is enough of a monopoly to prevent Ability rushing in to compete for the profits. Now, nobody consciously creates those monopolistic profits of an ordinary franchise: as we have seen, the profits of a railway or water company, for instance, constantly tend to increase, long after wages and ordinary business profits are paid, by the mere clustering of people who simply mind their own business, without paying

the franchises in question any attention but that of use. As intimated before, so far as any human effort is concerned, the excessive profits of such franchises are as much a bounty of Nature, as the rent of land is.

It seems plain, then, that the evolution of taxation seems to have been toward restricting it to land and franchises, and that such taxes are paid by the bounty of Nature.

But the question arises whether enough could be got from these sources. It is pretty hard to tell ^{490 (b). and can} from what other sources many taxes ultimately come now; only we get them in such devious ways that the friction and labor of getting them are a frightful burden.

^{490 (c). A questionable objection.} Professor Seager (Introduction to Economics) says: "The more intelligent and the more social the population becomes, the keener will be its appreciation of the common needs, and the larger the fiscal requirements of the government which minister to such needs, but these again have no connection with the size of the rent-fund." His boldness in denial should perhaps check me from boldness in assertion. Proof either way is not possible, but I am ready to rest the case on the assertion that "the more intelligent and the more social the population becomes", *the greater inevitably will be "the size of the rent-fund"*, and vice versa, each being both cause and effect. From his bold assertion, he deduces very logically that "the contention that a tax on rent would by itself meet all of the requirements of government at all times may thus be dismissed as visionary", while from my assertion I deduce just the opposite, tho what I would deduce regarding times and place *generally*, there would be needless temerity in asserting of *all*.

My deduction, however, is backed up by the facts that in many communities of all kinds, urban and rural, the tax on personal property has, for many reasons and in many ways, been virtually abandoned; and that those communities have never found any difficulty in getting needed revenue from the land and its improvements;

and this has succeeded in so many and so various communities, that there are many reasons for believing that it could succeed in virtually all. It is true, however, that the taxes raised as above described, have never included those for our national government. The question whether they too could be included in the system, is outside the range of experience, and will be answered by each thinker in accordance with his convictions on collateral points.

490 (d). The future of taxation. In regard to the future of taxation, all this opens up a bright vision. If taxes enough for all needs could thus be paid from the bounty of Nature (and there seems reason to think they could), we would be rid of the nuisances of custom-houses; of the injustices, business uncertainties and unutterable corruptions of the Protective System; of the duplications, petty annoyances, restraints and impediments to business in all excise and stamp taxes; of the obstructions to business occasioned, and the perjury invited, by all personal, succession and income taxes; of the obstacles to development of the country, in all taxes on buildings and improvements; of the aid to the niggard's saving, and the obstruction to elegant living and generous hospitality involved even in so good a tax as that on rental value; and of the army of place-holders necessary to collect all these taxes.

The ideal seems to be to tax no human effort or its results, but to pay the expenses of government from the bounty of nature.

And yet, despite the obvious truths just recounted, ignorance and habit so befog tax commissions generally that instead of applying their ingenuity to getting the taxes onto the land, they generally spend their time monkeying (I use the word deliberately) with the old inquisitorial and vampire schemes, and devising new forms of them. An honorable exception to this, in one particular, was indicated in the minority report of the New York commission before alluded to: it recommended a "habitation" tax—a better name for the excellent "rental-

value" tax of England. But as already said, the committee boggled its recommendation by wanting the landlord to collect and pay it over, altho the landlord, as such, has, in principle, nothing whatever to do with the tax beyond owning the property which determines its amount.

490 (e). No hardship to landowners. True, the land-taxes would come out of that portion of the bounty of Nature which has been secured by the landowners, but as already shown (472 e, 472 f), taking taxes from it, instead of from personal property, would not make nearly all the difference to those people, that at first sight it seems to: generally, they would be merely paying from one pocket instead of several, and it looks as if the proceeding, while doing them little, if any, harm, would be vastly to the advantage of the community in general. The vast increase of the tax return that could properly be had from the franchises, would tend to keep down the burden on the landowner. Considering that, and the vampire and inquisition taxes which owners of ordinary real estate already pay in addition to the realty-tax, and the expense of collecting them, it is probable that the ideal system would materially reduce their present burdens. At all events, as already said: many of the landlords, including the most intelligent portion, seem ready to have all taxation derived from their real estate. They want the direct tax on personal property removed, they are generally opposed to income and succession taxes, and not a few of them are opposed to tariff and excise taxes.

490 (f). Amortization. And yet it is true that each tax put on a piece of real estate, lessens its selling value. The tax is amortized, as they call it—deadened—into the value of the real estate. A tax of \$5 a year, for instance, would amortize the value of the estate about a hundred dollars, as it is 5 per cent. income from a hundred dollars. But as real estate in the settled portions of the country has been paying a larger and larger share of the taxes for a long time, in many

places its tax burden must be pretty much amortized already. And yet the value of real estate seems to advance, on the whole, faster than amortization has pulled it down—and especially in the very places where it pays the largest share of the taxes.

It looks as if this process is to go farther—as if people, as they get wiser, are going to throw off more and more of the stupid taxes, and real estate will have to bear more and more, except as franchises relieve it.

But will real estate become valueless in consequence? It certainly has not, so far; and as everything that benefits the community benefits real estate, it seems probable that the removal of the stupid taxes will benefit real estate even more than wise taxes will harm it, the difference being made up in economy of collection, and other economies.

The effect of the apparently-coming system on the poor man's taxes, would be that instead of paying, as *490(g). A boon to the poor.* now, indirect taxes on nearly everything he uses, he would simply have to pay no taxes at all, except as the real-estate tax should distribute itself as far as him. It could not help affecting his wages favorably, because business, being relieved of tariffs, excises, stamps, and taxes on plant and goods, would flourish better; the demand for labor would consequently be better, and so work would be steadier and wages higher.

But the argument which has led up to this bright picture, may seem to yield the claim of Henry George that government has a right to take *all* economic rent by taxation. Yet it really does not: for *nothing in it involves government taking more than its legitimate needs.* George claimed that it should take all, and use the excess over legitimate needs, in pauperizing the community. In addition to that disastrous effect, would be the one probably equally disastrous, of destroying all the advantages which we have seen to be inherent in private ownership of land, and which we have also seen that some of the loudest of the alleged followers of Henry George also make the same claim for.

Yet a sole dependence on real-estate and franchise taxes is open to one very serious objection that was

490(h). How to include all citizens. raised against indirect taxes: unless a man owned land or shares in a franchise cor-

poration, his stake in economical government would seem to him even less than under a system of purely indirect taxation. Under that, he may not know he is taxed; but under our new ideal system, he would not be taxed at all, except so far as real-estate taxes may be diffused to him. The best way to meet this difficulty would be to encourage and help each man to own at least his home, and meanwhile to bring in the best of the other taxes we have examined—the rental-value tax—to make every voter pay a tax according to his rate of living, whether he lives in a palace or an attic—to make him realize that he has a stake in the government, if it is but a dollar a year.

True, there are numbers of sovereign American citizens whose vote counts as much as anybody's, who never have as much at a time as a dollar to pay a tax with. Perhaps it is time to have their vote stop "counting as much as anybody's"—to have them stop disposing of other people's money: for the frightful wastes and stupidities in our taxation are largely due to their votes.

491. Causes of delay.

Of course the adoption of a system of taxation promising so much good, is obstructed by the same ignorance and stupidity which *491(a). Ignorance and self-seeking.* obstruct most good things. Moreover, the system does not promise much immediate good to the owners of franchises, and they own most of the legislatures. Of course landowners would favor the single land-tax still more if they were sure of liberal franchise-taxes to lessen their own. But many land-owners, especially the farmers, will obstruct it anyhow, until they understand it better. It is also opposed by a stronger and better organized and more interested element than the farmers or, perhaps, the franchise-owners, namely, the manufacturers. They spend enormous sums in keeping up the so-called protective system.

491 (b). In the U. S. But there is a firmer obstacle than even *Constitution*. the protective system, to the national government taxing land.

As we saw (466 o), the National Constitution opposes it, and it is probably harder to amend our National Constitution (Art. V) than even to get rid of the protective system. Yet constitutional amendments *are* possible, with the growth of wisdom, and sometimes in spite of it. Moreover, a tariff system is not necessarily a so-called "protective" one, as Great Britain has shown, tho it is very hard to prevent its becoming so.

The great hope for the future is in more education—moral as well as economic. It is sad, tho, that so much of it must still come, as perhaps the most valuable education generally does, through struggle and waste.

CHAPTER XLIV.

GENERAL SUMMARY AND CONCLUSIONS.

We have merely touched the outlines of
^{492. General conclusions regarding the Civic Relations.} the complicated questions we have treated: the discussion of them has run into libraries, and is increasing at a geometric rate. Then we should expect them to be handled by the half-educated men who compose the majority of our legislatures, just as they have been handled since the debt for the civil war increased their difficulty—with probably less wisdom and more corruption than in any other nation among the great powers.

The only remedy is to increase the
^{493. The questions for experts.} respect for knowledge, and the scorn of corruption, and to get legislatures in the way of leaving such questions to expert and faithful men, even if, as they even now are sometimes wise enough to, they have to call upon commissions chosen outside of their own members. As we saw (429), it is becoming more and more the custom to leave matters requiring expert knowledge, in the hands of expert commissions; and it is becoming recognized here and there, as indicated by John Stuart Mill, that the ideal government toward which society seems tending, will consist mainly of a number of bodies of experts acting under a central administration distinguished for judgment and executive capacity, rather than for expert knowledge. Probably the large miscellaneous legislative assemblies will eventually disappear. Already their sittings begin to the regret of the intelligent, and end to their relief.

In some places where the sessions of the legislatures were once annual, they have already been made biennial; and so great an authority as the late Mr. Godkin favored their entire abolition.

494, Evolution of the Civic Relations, Let us supplement our detailed attention to the Civic Relations by a review of the ground we have been over, and a few general conclusions that cover it all.

From ancestors very low in the scale of being—ignorant, improvident, lazy, unmoral and solitary, have been evolved civilized men—with knowledge, forethought, energy, morality and the inestimable advantages of civil life. But we seem to have as yet reached, at best, a very humble stage of the evolution, and that best has been reached by but few: the vast majority of mankind are still, by comparison with the few in advance, ignorant, improvident, and (the worst of them) lazy, dishonest, and even solitary—their hands against every man, and every man's hands against them.

The control of the means of happiness—largely included under the name of wealth, is of course, despite exceptions, mainly in the hands of the few possessing knowledge, forethought, energy and honesty.

494 (a), and of their problems. Very naturally those who do not possess wealth, want it; and such of them as can exercise the virtues which produce it, generally get it: most of those who have it, have produced it for themselves, tho a few have inherited or stolen it from the producers. But the unfortunate majority who lack the wealth-producing virtues, naturally wish to get the wealth without exercising the virtues—to make water run upward without supplying the power—to get something out of nothing; and so they, and many half-reasoning sympathizers, have invented all sorts of impossible schemes of the perpetual-motion order, for accomplishing that result.

494 (b). Rapid accumulation of nostrums. Recent times have been preeminently the times of nostrums: for the average man has been lifted out of the sodden

ignorance and indifference of a century ago, into some conception of better conditions, some hope of obtaining them, and abundant readiness to attempt any way of doing so that may dazzle his attention. He has been given a vote, too, and, tho he generally has no more idea of what to do with it than if it were a spectroscope, he is very full of the idea that with it he can work miracles.

While he is often averse to taking from those who have more, unless he disguise the process, even to himself, by some sophistry, he is very ready for any scheme under such disguise; and his recent "little learning" and the wide diffusion of it, has spread many sophistries and schemes based on them.

Yet the sympathies must be dull which do not give any response to his efforts. It seems very hard that to only one man in many should be open the enjoyment of art and literature and refined society; but it is surely better that they should exist for the few than that they should not exist at all; and such, so far, has been Nature's way. But through the human agents she has evolved, she is spreading these advantages at a rate which has lately increased to astonish us, and which, it is perhaps not too much to say, must in a time that we can foresee, include all men. There is overwhelming evidence in schools, libraries, settlements, legal-aid societies and other benefactions, that the more able men do respond to the need of the less able, and are eager to aid them in all efforts that are reasonable and hopeful. Indeed, efforts that are foolish, hopeless, even destructive and suicidal, have engaged the support of many of the well-to-do whose sympathies are stronger than their intelligence.

495. The Labor Trust.

Impatient as cool reason may be with it all, there is something pathetic about it: for many of the enthusiasts are as sincere in their faith, and as ready to sacrifice themselves for it, as any other fanatics have ever been for theirs.

496. The labor question a real question for real reason

But under all these theories is a question rooted in much deeper soil than the shallow inventions of the dreamer and

the quack. The "labor question" is a very *real* struggle for shares of a product that *must* be divided, and a struggle that will last as long—which will probably be very long indeed—as men are too near-sighted to see the broadest self-interest in the general interest. In this real struggle, the unreal remedy must dominate the vulgar mind—the remedy, as so often said, of getting wages higher than the equation of supply and demand. That the trade-unions have done great service, and may yet do great service, in keeping wages *up to* the point of equation, is undoubted; but they have lost all sight of that intention, and think only of forcing wages to any height attainable through any means, no matter what bruises, what fatal over-strains, and what falls may result.

497. Aggression Originally combined against the employers' aggressions, the workmen have themselves become the aggressors. The employers are now combining against the workmen's aggressions, and soon will be in renewed danger of becoming the aggressors themselves. Meanwhile, the community in general is combining against the aggressions of both, and in that combination are even some of the combatants on both sides: so clearly can men see the wrong in others' acts which they are blind to in their own. The waste on both sides is frightful, but it must gradually force a recognition that the wisest policy for both sides is to facilitate the operation of supply and demand, instead of opposing it; and to help each other instead of hindering each other. With this recognition, must gradually emerge conditions under which wages will be so high that the productive power of the men will be at its best; and so low that labor and its resulting commodities can be obtained, by laborers and all, as cheaply as our control of Nature's forces permits.

Society will gradually obtain its rightful control of natural monopolies, and secure that no artificial monopoly of either labor or capital shall stand in the way of the general good—that no monopoly of either mines or miners' labor shall stop the supply of fuel;

that no monopoly of either food or food-producing labor shall limit the supply of food; that no monopoly of either any good thing or the labor supplying any good thing shall limit the availability of that good thing. The strength of one of the opposing forces will continue at times to force conditions too far one way, then the other force will drive them too far the other way; but those wielding the forces, and those affected by them, are fast learning through bitter experience, where the points of reason lie, and the movements beyond them on either side must gradually grow less and less.

Meanwhile the mistaken schemes not only obstruct the production of wealth, and make money flow in the wrong direction—from the poor to the rich, rather than from the rich to the poor, but they befog the popular intelligence, and obscure the fact that, so far as happiness comes from anything but a clear conscience, a contented mind and a loving heart, it comes from knowledge, forethought, energy, honesty and the political freedom which can be had only from civic enlightenment and the strict performance of public duty: thus the mistaken schemes are among the chief obstacles to the improvement of government.

497 (a). *Evolution
of vices in gov-
ernment.*

Among beasts and very primitive men, where there is no wisdom and no patriotism, government is of course that of the strongest. Later, cunning plays some part; and, in time, higher forms of wisdom come in, and those possessing military and civic ability gradually share in the government. But lately the need of capacity in directing government, has gradually been ignored, because of reactions against tyranny, because of sentimentalism, and of competition between parties for popular votes. While on one hand, as we have seen, public education is maintained at enormous expense on the ground that an ignorant man is not fit to vote, on the other hand, demagogues vie with each other in devices to enable men who cannot even read, to cast the ignorant vote on

which the demagogue depends; and many sentimentalists not intentionally demagogues coöperate with them. In the extreme instances—America and France, suffrage has become universal: the incapable majority now exercise the power, except as a capable minority can influence them; and consequently the governments (especially many of the local American ones) are vastly more stupid and corrupt than those of the other nations anywhere near the same intellectual and moral plane in other respects. Undoubtedly some believed that in the ballot—the standard of liberty, there was magic to enlighten and convert all who touched it. But experience has not increased the belief. And now that standard has been flung into the ranks of the enemy, and there it stays.

498. Improve suffrage. How to rescue it, seems an almost insoluble question. Possibly it can be done by making those incapable of appreciating it, incapable of holding it; certainly it could be done by making more of those holding it, capable of appreciating it. Yet the question does not even present itself to the increasing number of those who dream of a perfect world of imperfect men. But in spite of them, the question is constantly demanding solution, and if Spencer's expectations regarding socialism (31 a) are realized, the solution will only be reached through blood. But such pessimistic fears are not inevitable. Already a reaction back to limited suffrage has been forced upon some of our states, and there are a good many indications that that reaction will spread. But, better still, there is a degree of attention paid to the Civic Relations that was not dreamed of a generation ago; and this is especially the case in the universities, whence the education must inevitably filter downward.

499. Evolution not all negative. Notwithstanding all discouragements, we may recognize many other grounds for hope. The very desire for wealth, despite all the evils it has brought, has done more to evolve the virtues which produce wealth, than all other agencies put together; and also, by a strange

(a). Even the desire for wealth is beneficial.

paradox, the absence of wealth has done as much to evolve, in both rich and poor, virtues nobler than even those which create wealth—sympathy, generosity, philanthropy. Let us reflect, too, that the difficulties of good government have been equally powerful in developing the other civic virtues.

I confess that, having started with a *499(b). The struggle for existence ceasing to be a brute struggle.* faith that progress can be hoped for only through the struggle for existence and the survival of the fittest, this appearing to be the only course supported by natural law, I have come to realize that with the evolution of intelligence and sympathy, standards of fitness to survive have materially changed, and that the struggle for existence has materially changed with them. Now the struggle of brute force has become a struggle of intelligence, and even a competition in honesty and amiability: the wide industry of commercial traveling is largely a competition in amiability and personal agreeableness; the business houses that can most be depended upon, are those which oftenest succeed. With complexity of industry has come interchange of function, and with that, even sometimes a competition in mutual service: for instance, the hotels do what they can to help the railroads and amusements, while the railroads and amusements do what they can to help the hotels. The vast majority of people have long got the very best in their lives, not by struggling with all others for food and shelter, but by mutual support. As soon as the family was evolved, the struggle was suspended between the members of it, and turned into that mutual support. This process soon embraced the clan, and then spread into the tribe and nation. Very early, the benefits of security and order were obtained by supporting, not struggling against, rulers, generals and priests. And as literature and art and science and education are evolved, the original contribution to support the ruler is distributed among a great mass of government officials, and among diplomats and students

and teachers of political science; while the contribution to support the priest is likewise shared by those students and teachers, as well as by authors, actors, musicians and other artists of all descriptions. And while the reflective student will realize that members of these groups still are condemned to the struggle for existence among themselves, that struggle is virtually only on the fringes of the groups—among the members whose claim to positions in the groups is doubtful; and he will also realize that even this struggle is not “red in tooth and claw”, but a competition as to who shall discover the best truth, or teach it best, write best, sing best, act best, paint best.

499 (c). Wisdom and sympathy gaining control. Even in the world where the food and drink come from, the survivor is not the strongest brute, but the wisest and often the gentlest and kindest man, to provide for whose material wants is often the very salvation of men better fitted than he to survive in the merely physical struggle.

On the other hand, through the reciprocation of this man, the world is progressing, in spite of its being sometimes held back by his using his superior intelligence to despoil others. But generally he uses it to devise work for them, to organize them, to get the most possible out of them by caring for them, not by consuming them; to dispose of the product so that they can get the greatest variety and amount of goods in exchange; and to share with them the surplus which his talents secure, in better housing and means of recreation, instruction and entertainment.

499 (d). They can not be forced. How far these shall be his voluntary gifts administered under his direction, and how far the cost of them shall be taken from him and administered by the state, is a complex and difficult question. As a fact, however, whether they come by taxation or by gift, they come from him. The question is how to get the most of them out of him. They will not come at all if he is discouraged from producing the wherewithal. There is no other source of them under heaven but him. Tax him in the hope

of dividing his large share of production, in the shape of government gratuities, among those who produce less, and you discourage his production; banish him by taxation, as he has already been banished from more than one place, and the place reverts to primitive conditions: probably his energy cannot be suppressed by robbing him, but will simply be driven elsewhere. But withdraw his guidance in any way, unless he appear again, in a new incarnation of the divine, those he guided revert only to primitive production.

499 (e), Their necessary creed. Yet it is for him, and for those whose studies fit them to act with him in the shaping of wise policies, to dwell on the old old truth illustrated in all forms and stages of human evolution, that the only way for the strong and wise to make their own prosperity and opportunities secure, is to make the state which protects them, a state of enlightened, thrifty, virtuous, and therefore prosperous, happy and contented people.

INDEX.

(References are to pages.)

Ability (*see also CAPITAL; ENTERPRISER; WEALTH*), a source of property, 42, 44 ff.; private property in land stimulates, 49; required in farming, 55; defined, 87; product varies with, 87, 105; wages vary with, 89, 105, 340, 541; conflict between labor and, 90; functions of, 91 ff.; and averages, 92; finds work, 93; increases product, 94, 100; saves waste, 94; outside of tangible production, 97; reward of, 101; cannot afford to grind labor or capital, 107; capital and labor powerless without, 107; of handworkers, 108; comparative profits in different fields of, 109; few have great, 110; is increasing, 110; political, lacking in America, 146; essential to securing free labor, 154; how affected by communism, 222 ff.; by socialism, 225 ff.; forcing, to guide labor, 227; powers of, 228; private property a consequence of, 229; and desert, 240; affecting diffusion of wealth, 326; how cultivated, 347; should not be paralyzed by law, 354; movements of, influenced by taxation, 532

Accidents, protecting laborers against, 287; and closed shop, 287

Accommodation Paper, 162
Act of God or the public enemy, 166, 181, 183
Adams, T. S., on strikes and lockouts, 251, 252 n., 271, 274 n., 410; on labor laws, 283; on public franchises, 410 n.
Administrators, 201
Advertisements, government loss in carrying, 412
Affirmation and oath, 164
Agency (*see also AGENTS*) by necessity, 192
Agents, 190; liable for exceeding authority, 191; cannot make any profit for themselves, 192; liable with principal in wrong-doing, 193; superior generally liable, 193; responsible for subagents, 194; classes of, 195
Agreement (*see also CONTRACT*), 152
Aid, government, for building railroads, 411
Alabama, unlawful acts in, 279
Alexandria, Va., electricity in, 441
Alienation of estates, 204
America, all property in, owned collectively by all the people, 236
American Federation of Labor, 254, 261 n., 282
American Steel Co., 255

- Amortization**, 620
Anarchism, 219; remedy for, proposed by Judge Arnquist and the author, 220
Anti-Boycott Association (*see also BOYCOTTS*), 261
“**Antient Light**”, 80
Anti-Injunction Bill (*see also INJUNCTION*), 261 n., 282
Anti-Trust Law of 1890, 136 ff.; difficulty of getting advantages out of such laws, 137; and the railroads, 138
Apprentices, limiting number of, 293
Appropriation-Tax (taking whole value of land), 595, 603
Appurtenances, 80; party walls, 81; land beside roads, 81; land by water, 81
Arbitration, *compulsory*, 297 ff.; and private contract contradictory, 317, 318; step toward state socialism, 319; *voluntary*, ineffective, 298, 323
Arbitration Act, first *compulsory*, and its effects, 299 ff.; H. D. Lloyd's conclusions, 306; in New South Wales, 308, 309; in Western Australia, 309; damages in, 313; latest word on, 322
Arbitration Courts, V. S. Clark on, 289 ff., 309 ff.; keep competition fluid, 296; in Australasia, 296 ff.; and closed shop, 315; and freedom of the press, 316; and “the obligation of contracts”, 317; and the right of assembly, 317; and trial by jury, 318
Aristotle, 93; created value in material things, 103; first systematic writer on politics, 523
Arkbridge, Mayor, of Philadelphia, cited, 422
Arkwright, Sir Richard, influence exerted by his loom, 345
Armies produce value, 102
Army Outfitting, etc., govern-
ment its own customer, 228; private initiative essential to variety, 228; by government, 494
Arnquist, Judge, and anarchism, 220
Assignees, 200
Assistance of poor: *see RECREATIONS AND ASSISTANCE*
Asylums, 496
Atkinson, Edward, on taxation, 531; on the tariff, 550
Attainder, 35
Australasia, laborers restricting work in, 216; the “Paradise of Labor”, 263; unionists of, 263; state competition with monopolies, 291; fixing of minimum wage, 292 ff.; sweating in, 292–294; compulsory arbitration, 296 ff.; taxation in, 457; government success in money-lending, 459; utility of government ownership, 460; “the government stroke” in, 461, 470; old-age pensions in, 500; separated tax and single tax in, 600
Austro-Hungary, suffrage for city officers in, 484, 485
Avebury, Lord, on municipal trading, 448, 454 n.
Averages, and ability, 92; tend to rise, 327
Backhouse, Judge, on New Zealand Arbitration Act, 308
Bacon, Roger, created value in material things, 103
Bad Times: *see HARD TIMES*
Bailments, 181; on different kinds of goods, 181; “common carrier” defined, 182; limiting liability without contract, 182; bill-of-lading, 182; hiring, 183; limit of responsibility, 183; without consideration, 184; liability of innkeepers, 184; pledge, 185; general principle of liability of bailees, 186

- Baldwin**, Judge, on incorporations, 121
- Ballot**, Australian, 484; magic in, 629
- Baltimore**, revenue from street-railway franchises in, takes care of all the parks, 146, 423, 428; rebuilding of, after fire, 238
- Bankers**, produce value, 102, 103; control policies of nations, 363
- Banknotes**, essentials of, 385
- Bankrupts**, assignees of, 200; justice of discharging, 200
- Banks**, savings, 374, 498; need of small, 390; effect on politics of branch, 390; taxation of, 390, 584
- Barbarian's idea of liberty**, 33; of property rights in land, 45
- Bargain** (*see also CONTRACT*), 152, 167
- Bargain-Stores**, 94, 130
- Barter and money**, 360
- Bastiat**, quoted, 326
- Baths**, public, 494
- Beef Trust**, government suit against, 137
- Belgium**, labor in, 90; rate of taxation in, 531
- Bellamy**, Edward, his scheme, 140
- Bell Telephone Co.** forced out of Massachusetts by taxation, 569, 570
- Bemis**, Prof., on municipal gas-plants, 439; on high wages in public works, 445 *n.*
- Benevolence** (*see also CHARITY; WEALTH*), of the rich, 352; no bar to accumulating wealth, 352
- Berlin**, regulation of advertising signs in, 445; electoral franchise in, 486; fire-insurance obligatory in, 501
- Bets**, 165; President Hadley on, 166
- Bill-of-Lading**, 182
- Bill of Rights**, 35
- Birmingham**, trust of bedstead-makers of, 304
- Bonds** (*see also STOCKS*), 76, 122
- Books**, number published in civilized countries, 414; killed by periodicals in the U. S., 414
- Bookstores**, decrease in, in the U. S., 414
- Boston**, school-books, 256; municipal ferry in, 395; municipal ownership of street railways in, 422; Public Library of, 490; parks of, 491; housing the poor in, 493; personal-property tax in, 580 *n.*
- Boycotts**, 28, 104, 247 ff., 410 *n.*; Anti-Boycott Association, 261; and Sherman Anti-Trust Act, 267 *n.*; damages in, 277; injunctions against, 280
- Brassey**, Thomas, on work and wages, 89
- Breach of Trust**, 200
- Bribery**, of legislature, 140; remedies, 141; of agent, 192
- Bricklayers** and use of concrete, 246
- Bridges**, 393
- Brooklyn**, personal-property tax in, 580 *n.*
- Brooklyn Bridge**, toll on, 393; municipal ownership of railway, 423
- Bryan**, W. J., the money question and followers of, 359; favors government operation of railways, 399
- Bunner**, H. C., cited, 92
- Bureaucracies** provided by universal suffrage, 456
- Burgomasters**, German, 478
- Burns**, John, labor logic of, 451
- Burns**, Robert, cited, 519
- Burrows**, C. W., on postal policy, 414 *n.*

California, personal-property tax in, 580 *n.*; taxation of mortgages in, 609, 611

Canada, labor in, 89; banks in, 390; railroads built by government in, 408; lumber kept out by high tariff, 532, 548

Capital (*see also ABILITY; ENTERPRISER; WEALTH*), enterpriser raises, 95; its return more like labor's than ability's, 106; powerless without ability, 107; entitled to protection equally with wages, 116; defined, 117; needs for associating, 120; incorporating, 121; furnished America by Europeans, 123; effect of great aggregations of, on legislation, 140; increase in wages has come largely from, 339; movement of, influenced by taxation, 532, 533

Capitalism and socialism, 239

Capital Punishment, 172, 514, 515

Capital Trusts, 138, 254, 255

"Captains of Industry", 38, 103

Carelessness, a wrong, 169; vast American wealth and good nature promote, 482

Carlyle, Thomas, on hanging, 515

Carnegie, Andrew, and the gateway of opportunity, 239; benefactions of, 490

Caveat emptor, 179

Cestui que trust, 200

Chancery Court, 47

Charity (*see also HOUSING THE POOR; RECREATIONS AND ASSISTANCE*), 30, 350, 351; should be reserved for emergencies, 30; should help poor to help themselves, 57; impossible under socialism, 226; general government production attacks, 229; effective only where wisely

directed, 349; communistic and socialistic idea of, 349; Charity Organization Societies, 350, 499, 520; present lines enough, 350; good only for those unable to work, 351; education of the poor, 351; province of the law, 352; duty of the rich, 354; corruption of voters under guise of, 483; economy and civilization require, 495; universal suffrage as affecting, 496; general conclusions, 501

Charles I., principal statute of limitations passed during reign of, 74

Charles II., principal statute of frauds passed during reign of, 69

Charters for railways, 404

Chattel Mortgages, 150

Checks, 362; not a legal tender, 187

Chicago, site of, sold for a song, 59; strikes in, 261 *n.*; labor bureaus in, 262 *n.*, 499; *Typhætæ* case in, 270, 277; street-railway franchises in, 422; power to own but not operate street railways, 425; gas-plant in, 438

Children's Courts, 510

China, labor most abundant in, 99; primitive society in, 153; little change from condition of status, 156

Christ, laws of Nature enunciated by, 23, 114; moral atmosphere created by, an essential of material well-being, 93; created value in material things, 102; and the motive for charity, 502

"Christian", the label, 239

Cincinnati, owns a railway, 399; revenue from street-railway franchises in, 423, 428; personal property tax in, 580 *n.*

Citizens' Associations, 324

Citizens' Industrial Associations, 245, 269

City Government (*see also MUNICIPALIZATION; SUFFRAGE*), 17

Civic Relations, all-important, 1; defined, 4; general conclusions regarding, 624; evolution of, 625

Civics, evolution in, vii; defined, 4; distinguished from "political relations", 4; not as exact as mathematics, 10; questions determined by prices of stocks, 123

Civilization, comes from work, 26; affected by land-tenure, 49, 563; proportion of private owners increases with, 51; would retrograde without inventors and organizers of industry, 99; of Greece and Japan, simplicity of, 100; what constitutes, 100; history of, an overcoming of disadvantages, 115; affected by contract, 152, 229; militarism declines with advance of, 156; rapid growth of Japan in, 157; wealth essential to, 157; affected by trade, 157; by socialism, 158; the web of, 242; "rich richer and poor poorer" not true under, 328; consumption of food increasing faster than population under, 333; consists in things that a man can do without, 347; wise philanthropy necessary to, 349; affected by money, 359 ff.; by roads, 391; dangers menacing American, 473; affected by charity, 495, 502; government service outside of monopolies detrimental to, 528; realty-tax incidental to, 587; evolution of, 625

Civil-Service Reform a remedy for party control over municipal offices, 478

Civil Suit illustrated, 15

Clark, Victor S., on Australasian arbitration courts, 289 ff., 309 ff.; on Australasian experience with municipalization, 456 ff.

Class Legislation, 316

Cleveland, and three-cent fare, 423; gas company in, 438

Cleveland, President, stops the panic of '93, 374 ff.

Closed Shop, 250; accidents and, 287; arbitration courts and, 315

Cnut's feudal system, 47

Coal-Mining Business, U. S. government in, 416; New Zealand in, 459

Coercion, trade-union, 243 ff.; false justifications for, 247; threefold, 247 ff.; striking, 248; conspiring to stop work, 249; other forms of, 250; no magic in, 262; law's regulation of, 263

Coin, currency only in, inelastic and extravagant, 383

Colbert, J. B., his theory of taxation, 534, 559

Collective Bargaining, 254, 255

Collectivism and individualism, 523

Collectors of the General Capital, 104

Colorado, eight-hour law in, 284

Combinations, 134

Commercial Paper, 150

Commercial Travelers, 128; improvements effected by, 128; vast number thrown out of work by trusts, 133

Commissions, desirability of, 467

Common Carriers, 182

Communal Land, 45; deadening influence of, in India, 45; in Russia, 45, 62

Communism, in land, 45; contract under, 155; defined, 219 ff.; \$1,200 apiece, 221; necessarily ephemeral, 222; in-

volves robbery, 222; wealth often destroyed when divided, 223; against Nature, 223; charity under, 349

Companies (*see also CORPORATIONS*), 125

Competency, laborers retiring with a, 327

Competition, 39, 127; hated by the lazy and stupid, 127; in domestic convenience, 127; benefits illustrated, 127 ff.; in locomotion, 128; in commercial traveling, 128; effects industrial revolution, 128; effects steadiness of business, 129; the "life of trade", 129; evils, 130 ff.; coöperation and, 131; sometimes wasteful, 131, 132, 142, 549; public seldom gainer by wasteful, 131; trusts a remedy for wasteful, 132; consists in lowering prices, 132; Professor Cooley on, 141; Charles Scribner cited, 142; socialism against, 234; equalizing, 311; stifled by "protection", 377; effect of government ownership of railroads on, 402; effective industry requires, 526; taxation and, 537

Concord, Mass., boulevard opposed in, 393

Conditional Sale, 178

Conduct, good, inspirers of, create value in material things, 102

Conduits for water, gas and electricity, 443

Confiscation, 251

Confucius, created value in material things, 102

Confusion, 170

Connecticut, increase of wages in, 330; personal-property tax in, 579 *n.*

Consideration (*see also CONTRACT*), under statute of frauds, 70; defined, 159 ff.; in bailments, 184

Conspiracy, to stop work, 249; labor, 265 ff.; law of, 267 ff.; Judge Harlan on, 267; Judge Knowlton on, 268, 273; U. S. Supreme Court on, 268; Davenport on, 269; district attorneys' duty, 273; Prof. Seager on, 274, 275

Constitution, U. S., not the final word of human wisdom, viii; Bill of Rights in the, 35; amending, 478; obstacle to better system of taxation in, 623

Constitutional Law: *see LAW*
Contract (*see also CONTRACTS FOR PERSONAL RELATIONS; CONTRACTS CONCERNING PERSONAL PROPERTY; QUASI-CONTRACTUAL RELATIONS; SALE*), rights, 40; value of established forms, 72; personal property the great field of, 151; rights of, distinguished from property rights, 152; as an element in civilization, 152 ff.; definition, 152; possible only to the free, 153; an education in freedom, 153; only able employers can secure labor under, 154; status versus contract, 154, 158, 317; freedom and private property evolve with, 155; Morrisey on contract-breakers, 158; law of rights under, 159 ff.; essentials of, 159; illustrations, 160; natural love and affection, 160; promises and contracts, 161; fictional, 163; mutuality, 163; three points necessary to, 163-165; law and religion, 164; justice and honor, 165; what contracts not enforceable, 165 ff.; law imposes self-preservation, 166; contracts which the law assumes, 167; estoppel, 168; carelessness and fraud, 169; statutes of limitations, 169; force vitiates, 170; waste through dishonesty, 170; when parties do not meet, 171; law does not require im-

possibilities, 183; remedies for broken, 198; principal kinds of, 198; general government production attacks, 229; obligation of, 317; Australasian arbitration attacks, 317; may sometimes work injustice, 319

Contract Labor, 284

Contracts concerning Personal Property, law of, 173 ff.; sale and delivery, 173; possession and ownership, 175; no one can sell more title than he has, 175; owner must not secure possession by force, 176; delivery and acceptance complete ownership, 177; conditional sale, 178; option, 178; when defects must be disclosed, 179; warranty, 179; suretyship, 180; insurance, 180; bailments, 181; tender, 186; contractual disabilities, 187; some limits of *quantum takbat*, 188; the law protects the weak, 189; verbal, in Wall Street, 342

Contracts for Personal Relations, law of, 190 ff.; agency, 190; partnership, 195; service, 196; remedies for broken, 198

Convenience, promotion of, a function of government, 6, 357 ff.

Cooley, Prof., on competition, 141

Cooper, Peter, his fortune in accord with Nature's laws, 114; his rise, 155, 158

Cooperation and competition, 131

Cooperative Enterprises, 107, 113

Corporations, 121; rapid new development of, in the U. S., 50; liability, 121; perpetuity, 122; stocks and bonds, 122; cheapen product, 124; not all owned by the rich, 124; irresponsibility, 125; small ones undesirable, 125; great indus-

tries mostly controlled by, 126; hated by labor, 126; overtaxed, 126; danger of monopoly, 126; state control, 136; made by the state, 138; corruption funds of, 140; effect of personal-property tax on, 583; cause of prejudice, 584; taxation of franchise and non-franchise, 584

Corruption funds (*see also MONOPOLIES; MUNICIPAL DIFFICULTIES; PROTECTION; PUBLIC WORKS; POLL; TAXATION; TRUSTS*), 140 ff.

Cotton-Gin, industrial change effected by, 345

Cotton-Spinners, increased wages of, 330

County Government, 10, 16

Courtesy and Dower, 72, 201 ff.

Courts under local, state and national governments, 15 ff.: needed against ignorance as well as against fraud, 170; probate, 206; supervising trustees, 207; children's, 510

Cox, Horace, on eight-hour day, 338

Creosote and Scotch whiskey, 539

Crime and pauperism among children of divorced parents, 2

Criminals (*see also DEFECTIVES*), generally poor, 342, 509; generally defective, 509; one wrong step does not demonstrate a criminal, 510; the indeterminate sentence, 510, 511; most criminals insane, 511; cheaper to keep rounders permanently, 511; habitual, 512; prison labor, 512; capital punishment, 514; life-term prisoners, 515; taxation for maintenance of idle prisoners, 536

Criminal Suit illustrated, 16

Currency: *see MONEY; PAPER MONEY*

Customs: *see TARIFF DUTIES*

- Cutler**, Mayor, of Rochester, on need of government inspection of street railways, 422
- Dalrymple**, ——, of Glasgow, on municipal operation in America, 424
- Damages**, for trespass, 68; for broken contracts, 198; in strikes and boycotts, 277, 278, 301; in arbitration law, 313
- Daniels**, Prof., on railroads, 396 ff.; on municipalization, 445, 447, 464
- Darwin**, Major Leonard, on municipal trading, 442, 447, 448
- Davenport**, Daniel, on conspiracy, 269
- Death-Penalty**: *see CAPITAL PUNISHMENT*
- Debs**, E. V., cited, 297
- Debts**, city, Lecky on, 469
- Deeds**, 70; seal on, 71; essentials of, 71; value of established forms of, 72; delivery of, 76; fraud in, 78
- Defectives** (*see also CRIMINALS*), 349, 507 ff.; trustees for, 207; the persistently poor, 507; the insane, 508; the criminal, 509; euthanasia, 513; education the only remedy, 514; capital punishment, 514; the young, 517 ff.
- Delivery and Acceptance**, 177
- Demand and Supply**, 129; in labor, 244
- Democracy**, on trial in municipal operation, 465; paradoxes of, 478; relations of, and *laissez-faire*, 489
- Denmark**, old-age pensions in, 501
- Depression**, business, of 1903-4, 134
- Derby**, Earl, on indirect taxes, 558 n.
- Derrick**, Mrs., "Crime" of, 210 n.
- Detroit**, municipal ownership of street railways in, 423; electricity in, 440
- Dewey**, Admiral, as an enterpriser, 96
- Dingley**, N., and the Spanish-war tax, 554 n.
- Dingley Act and Europe**, 543
- Direct Taxes** (*see also INCOME-TAX; INHERITANCE-TAXES; PERSONAL-PROPERTY TAX; REALTY-TAXES; TAXATION*), 534, 562 ff.: inquisitorial, 562 ff., 573 ff.; income-tax, 563 ff.; inheritance-taxes, 571; personal-property taxes, 573 ff.; obvious, 586 ff.; realty-taxes, 586 ff.
- Disease**, good resulting from, 115; statutes protecting community from, 288
- Dishonesty** responsible for bad government, 7
- Disraeli**, on income-tax, 571
- Distribution**, paradoxes of, 103
- Dividends**, cumulative, 122; limiting, 139
- Divorce**, its effect on children, 2
- Docks**, 396
- Domesday Book**, 48, 73
- Donald**, Robert, on municipal trading, 454 n.
- Donnelly Act**, 138
- Double Taxation** (*see also MORTGAGES*), 565, 608 ff.; of mortgages, 608; tax liens and deduct from valuation, 613; result of excises, 613
- Dower and Courtesy**, 72, 201 ff.
- Drummers**: *see COMMERCIAL TRAVELERS*
- Duluth**, water and gas in, 440
- Dunne**, Mayor, and Chicago street railways, 424
- Duties**: *see RIGHTS; TARIFF DUTIES*
- Dwellings for the poor** (*see also HOUSING THE POOR*), 491

Easton, Pa., electricity in, 440; Mayor March on, 440; D. W. Nevin on, 441

Economics, bad, destruction in, 102

Edinburgh, hospitals in, 497

Edison, Thomas A., cited, 93

Education (*see also RECREATIONS AND ASSISTANCE*), the poor helped by, 350; leisure classes should promote, 355; local versus state control, 480; state and private, 517 ff.; illiterate voters, 518; in Germany, 518; usable and unusable, 518; what is needed, 518; policy of European cities, 519; practical, not foe to poetry, 519; pauperization through, 519; "school-treasures" in France, 520; state's responsibility, 520; parents' duty, 520; elementary, in England, 521; in Holland, 521; the higher, 521; political pulls in, 522; state universities versus private, 522; the great hope for the future, 623

Eight-hour Day (*see also WORK-DAY, SHORTER*), 336 ff.; in Utah and Colorado, 284; Supreme Court and, 284; John Rae on, 337; Horace Cox and Sidney Webb on, 338; effect on cigarmakers, 339

Ejection, 68

Electoral Franchise: *see SUFFRAGE; UNIVERSAL SUFFRAGE; VOTERS*

Electricity, municipalization of, 440; versus gas, 442; plants in England, Germany and the U. S., 453

Emerson, R. W., on the distribution of wealth, 356

Eminent Domain, 64; in monopoly abuses, 139; at Niagara Falls, 139; under communism, 222; under socialism, 230; clearing slums under, 492

Employees (*see also LABOR; RAILROADS; SERVICE*), rights and duties of, 28, 196 ff.; accident insurance of German, 30, 500; power to contract, 154; increase in, 339

Employers, rights and duties of, 28, 196 ff.; often pay too high wages, 100; competition among, 154; coercing of, 248 ff.; associations of, 260 ff.

Endorsement, 148 ff., 161

England, Poor Law in, 29, 230, 231; laborers in, 89, 110; churls and villeins of, 154; wages in, 221, 332; increase of estates in, subject to succession tax, 331; improved condition of working classes in, 331 n.; paupers in (London), 332; postal savings-banks, 332 n., 498; roads in, 392; government ferry at Woolwich, 395; railroads in, 397, 401; municipal gas-plants in, 435; opposition to municipal trading in, 469 ff.; suffrage for city officers in, 484, 485; labor bureaus in, 499; rate of taxation in, 531; free trade in, 549; wastefulness of taxation in, 558 n.; division of incomes in, 567; income-tax in, 571; multiple voting in, 595; rental-value tax in, 606; taxes luxuries mainly, 615

"Enrichment", 188

Ensley, Enoch, (quoted by Wells,) on taxation of movable property, 577

Enterpriser (*see also ABILITY; CAPITAL; WEALTH*), and wage-earners, 92, 103; defined, 94; prophesies wants, 95; raises capital, 95; at the works, 95; outside the works, 95; popular view of the, 95; effects division of labor, 96; often fails, 97; J. H. Walker quoted, 97 n.; his income not at expense of labor, 98; must pay good

wages, 100-1; fallacy that he produces nothing, 101; rates of division of product, 107; generally gets less than nothing, 108; Mayo-Smith quoted, 340

Entrepreneur: *see ENTERPRISE*

Equilibration, law of, 327

Equity of Redemption, 76, 611, 612

Erie Canal, wages of laborers on, 330

Escrow, 75

Estate (*see also REAL PROPERTY*), life, 72, 80; technical meaning of, in land, 78; restrictions, 83; in personal property, 150

Estates at Will, 80

Estates for Years, 78, 79; repairs, 79; subletting, 80; terminability, 80; notice, 80

Estoppel, 168

Euclid, 93

Euthanasia, 513

Evils have their uses, 114

Evolution, in civics, vii ff.; of property rights, 42; of hereditary feudal relations, 47; of private ownership, 48; of rights in personal property, 87 ff.; invention and, 98; a question of, 110; simultaneous in freedom, private property and contract, 155; the law is an, 171; of road-making, 392; single tax an, 600; of taxation, 617 ff.; of civilization, 625; of government, 628; not all negative, 629

Exchange, right of, adds to value, 40

Excise, 539; secret stills, 539; objections, 540; may limit dangerous pursuits, 540; more than twice as good a tax as the tariff, 556; multiplies taxation, 613

Executive, 13

Executors, 202

Experts, ideal government will consist of bodies of, 624

Ex post facto Laws, 35

Express Service, 412; by European post-offices, 415

Failures, J. H. Walker on, 97 n.

Fares, low, Mayor Johnson and, 424; how to secure, 429; in Columbus, Rockford and Cleveland, 429; in Germany, 528; zone, in Glasgow, 429

Farm Colonies, 53

Farming, dearth of laborers, 54; needs ability, 55; machinery in, 344

Farms, abandoned, 54

Federal Salt Co., government suit against, 137

Fee Simple, 78, 587, 611

Ferries, 395

Feudal System, 46, 153: advance on communism, 46: in the Saxon kingdoms, 46; under Cnut, 46; guardianship, 47; disposal in marriage, 47; under William the Conqueror, 47; Domesday Book, 48; evolution of private ownership under, 48 ff.; scutage, 48; leases for labor, 48; money commutation of labor leases, 48; contract under, 155 ff.

Fiat Money, 364

Fiction in Law, 163

Fiduciary defined, 199

Finance, incorrect principles of, destroy value, 102

Folk, Governor, quoted, 399

Food, increase in price of, 335

Forgiveness a law of Nature, 23

Fortune (*see also WEALTH*), examples of change of, 97 n., 209 n., 348 n.; inequality of, 113; right use of, 113; excessive fortunes, 204 n.

France, public workshops of, 29, 30, 500; land laws in, 51; labor in, 90; increase in wages

in, 333; roads in, 393; railroads in, 397; suffrage in, 486; theatre in, 490; housing the poor in, 493; "school-treasures" in, 520; rate of taxation in, 531; levies retaliatory duty on Italian silk and cottonseed-oil and bacon, 542, 543; protectionism in, 549; wastefulness of taxation in, 558 *n.*

Franchise, Electoral, (*see also SUFFRAGE; UNIVERSAL SUFFRAGE; VOTERS*.) 473 ff.

Franchises, 145; seized by politicians, 145; should not be sold outright, 146; value of, in Baltimore, 146; operation, ownership, regulation, 394; increment in, 394, 428; of ferries, 395; taxation of, 404, 584; government control of private operation of, 409; Prof. Adams on, 410 *n.*; in Chicago, 422; too short, 452

Franchise-Tax (*see also REALTY-TAXES*), 606 ff.

Frauds, statute of, 69; in land transfer, 78, 84; in contracts, 169; never defined, 169; in consideration, 173, 174

Free assembly, etc.: *see LIBERTY*

Freedom (*see also LIBERTY*), contract and private property evolve together with, 155; socialism would destroy, 231

Freedom of the Press (*see also LIBERTY*) curtailed by arbitration courts, 316

Free-Food Depots, 31

Galton and the law of averages, 92, 93, 327

Garfield, J. A., rise of, 155

Gas, 435; craves municipalization less than water, 435; cheapened by it in some places, 436

Gautama, moral atmosphere created by, an essential of mate-

rial well-being, 93; created value in material things, 102

Genghis Khan and the communal system, 154, 155

George, Henry, theories of followers of, 58, 563; advocates single tax, 595, 621

Georgia, personal-property tax in, 580 *n.*

Germany, employees' accident insurance in, 30, 500; labor in, 90; income-tax statistics of, 333; new money system in, 368; government ferries in, 395; railroads in, 397; municipal gas-plants in, 435; extension of street lighting in, 435; burgomasters in, 478; suffrage for city officers in, 484, 485; vote of taxpayers in, 486; runs theatres well, 490; housing the poor in, 493; labor bureaus in, 499; old-age pensions in, 500; unusable education in, 518; protectionism in, 549; income-tax in, 571

Giffen, Sir Robert, on wages, 331

Gladstone on income-tax, 571

Glasgow, failure of Bank, 122; municipal ferries in, 395; docks in, 396; report of tramways, 425; municipal gas-plants in, 436; extension of street lighting in, 436; railway facilities and fares in, 449; objection to municipal trading in, 454 *n.*; housing the poor in, 493; public wash-houses in, 495; lodging-houses in, 497, 498

Glass-Blowers, making work for, 217

Gluts (in manufactures), 546, 550

Godkin, E. L., as a citizen, 355; on division of English incomes, 567; favored abolition of legislatures, 625

Golden Rule a law of Nature, 23

- Gompers**, Samuel, anti-injunction bill advocated by, 282; his "fight", 297, 324
- Goodnow**, Prof., on reform in municipal politics, 478; on separation of state and local functions, 479
- "**Goods**" not all material things, 108
- Government** (*see also MUNICIPAL DIFFICULTIES; MUNICIPALIZATION*), general functions of, 5 ff., 8; illustrated, 5; classified, 5; results of bad, 6; responsibility for bad, 7; good, requires effort, 7; geographical divisions, 9 ff.; departments, 13 ff.; sources, 14; protects workingmen, 28; landowners best guardians of, 52; produces value, 102; control of trusts and monopolies, 136; danger of tyranny, 139; production by, attacks variety, 228; and private property and contract and charity, 229; by injunction, 281; honesty of, affects prices, 343; aid to deserving poor, 351; in manufacturing and banking business, 375, 385; notes, objections to, 382; may pass law impairing obligation of contracts, 403; railroads managed by, 406 ff.; railroad vote in, 408; municipalization, 451, 524 ff.; production by, attacks initiative, 451, 470; state functions and city functions, 479; army outfitting, etc., by, 494; administers charities poorly, 495; and the death-penalty, 513, 514; in education, 520; proper sphere of, 523 ff.; individualism and collectivism, 523; cost of, in different countries, 531; stability influenced by methods of taxation, 532; indirect taxes prevent criticism of, 558; cost of, per person in U. S., 558; affects real-estate values, 591; ideal, 624; vices in evolution of, 628
- "**Government Stroke**" in Australasia, 461, 470
- Graft**, and socialism, 238; corporation and political, 405, 491; in London, 421
- Great Britain**, gas consumed in, 439; street railways, electric lights, and telephones in, as compared with the U. S., 440; municipal gas-plants in, 452
- "**Greatest Happiness**" Principle, 22, 27, 63, 64, 113, 204, 247, 270
- "**Great Industry**": *see INDUSTRY*
- Greece**, simplicity of civilization of, 100; busy with her past, 518
- Greed** and socialism, 238
- Greenback Currency** of Civil War destroyed values, 102, 366, 378; versus gold, 365
- Gresham's Law**, 386
- Grosvenor**, W. M., on prices, 329
- Guardianship**, feudal, 47; at present, 206
- Habeas Corpus**, 37
- Habitation Tax** (*see also RENT-VALUE TAX*), 619
- Hadley**, President, on betting, 166; on improvements in railroads and telegraphs, 470
- Hahnemann** and the homeopaths, 232
- Hamburg**, docks in, 396; gas-plants in, 435
- Hamilton**, Alexander, revenue tariff of, 544
- Hamilton**, O., lighting plants in, 438
- Handworkers**, claims for, 90, 95, 108
- Happiness** (*see also PURSUIT OF HAPPINESS*), principle of greatest 22, 27; state's relation to, 41; not dependent on wealth, 348; causes of, 628

- Hard Times**, forehandedness against, 346; effect of, on prices, 346
- Harlan**, Justice, on conspiracy, 267
- Head**, Mayor, of Nashville, and street-railway companies, 427; experience with gas and electricity, 441
- Hearst**, W. R., and municipal ownership, 395
- Help**: *see CHARITY; HOUSING THE POOR; RECREATIONS AND ASSISTANCE*
- Helpless**: *see DEFECTIVES*
- Henry**, Patrick, cited, 519
- Henry II.**, scutage imposed by, 48, 587
- Henry VIII.**, regard for human life in time of, 172
- High Prices** and palliatives, 314
- Hildebrand** and the feudal system, 155
- Hill**, John A., and printing strike, 88
- Hiring**, 183
- Holland**, suffrage for city officers in, 484
- Home**, importance of the, 2; right to a, 53
- Honesty**, raises wages and credit, 341; lowers prices, 342; of government affects prices, 343
- Honor and justice**, 161, 165
- Hospitals**, 496
- Hotels** improved by commercial travelers, 129
- Hours of Labor** (*see also WORK-DAY*), 329
- House-Building**, 493, 494
- Housing the Poor**, 491 ff.; community should regulate it in self-defence, 494; but not necessarily undertake it, 494
- Idiots** vote in New York, 486 n.
- Idleness**, insurance against, 500
- Ignorance** responsible for bad government, 7
- Illinois**, labor bureaus in, 500; personal-property tax in, 581 n.
- "Imperialism"** and politics, 476
- Improvements**, land occupier's rights in, 60; should be voted on by taxpayers only, 484 ff.
- Incapables** (*see also DEFECTIVES*), 349
- Incomes**, statistics of British, 331 n.
- Income-Tax**, impossibilities not required by law, 183; Prussian statistics of, 333; declared unconstitutional by Supreme Court, 553, 570; defined, 563; falls only on successes and active property, 563; proportioned to ability, 563; premium on lying, 564; violates rights of privacy, 565; generally doubles taxation, 565; as illustrating progressive taxation, 565; discrimination of sources, 566; as equalizing fortunes, 566; progressive, 566; as offsetting injustice in other taxes, 567; out of proportion to state's services, 567; taxation versus benevolence, 568; taxing away business and benevolence, 569; characteristic of militarism, 570; heaviest on those least able to bear it, 570; and social war, 570; approved only as a necessity, 571; Gladstone and Disraeli on, 571
- Increment**: *see UNEARNED INCREMENT*
- Independence**, civilized man loses the savage's, 91
- India**, communal land in, 45; labor in, 89, 99; primitive society in, 153; little change from condition of status in, 156
- Indirect Taxes** (*see also TARIFF DUTIES; EXCISE; STAMP-TAXES*;

TAXATION), 534, 539 ff., 556 ff.; excise, 539; duties, 541; stamp-taxes, 553; general conclusions on, 556 ff.; wasteful, 556; hard on the poor, 556; corrupt legislation, 557; prevent criticism of government, 558; why popular, 559; summary for and against, 561; poor substitutes for, 616; how England uses them, 616

Individual, society's control of the, 1 ff.; liberty of the, 288

Individualism, all the progress of mankind made under, 232, 235; socialism and, 232; universal suffrage implies, 488; and collectivism, 523

Industrial Associations, 324

Industrial Regulation promotes centralization of industry, 312

Industries, politicians running, 140; government control of, 416 ff.

Industry, the Great, cheapens product, 98; early days of, 106; essentials of, 117; developed by corporations, 123; economies of, 133-135; venal legislation and, 140; introduced by steam, 345; effect on labor, 345; on economic doctrine, 345; requires competition, 526; as affected by taxation, 532

Inheritance-Taxes, 571; collateral, 572; *Evening Post* quoted, 572

Initiative, private, essential to variety, 228

Injunction, Anti-Injunction Bill, 261 n.; against boycotts, 280; judge's power to punish under, 280; government by, 281

Injuries (*see also ACCIDENTS*), protecting laborers against, 287

Injustice, citizen's duty to fight, 196

Innkeepers as bailees, 185
Inquisitorial Taxes (*see also DIRECT TAXES*), 562 ff.; intolerable, 616

Insane, care of, 508; criminals, 509 ff.

Insurance of employees against loss of work and accident, 30, 500; in general, 180; against idleness of old age, 500

Insurance Companies, officers of, 103; and San Francisco earthquake, 236, 339

Intelligence, growth of, 115

Interest (*see also USURY*), defined, 118; legal rate of, 118; law in New York regarding, 119; reduction of, 339

Interstate Commerce Act, Prof. Seager's summary of, 405

Intestates, devolution of estates of, 201; rights of relatives of, 201

Invention and evolution, 98

Inventor reaps only small proportion of his production, 88; defined, 98

Investment, unwise, 121

Ireland, labor in, 39; secret stills in, 539

Italy, beggars in, 349; railroads in, 397, 407; suffrage for city officers in, 484, 485; old-age pensions in, 501; rate of taxation in, 531; levies high duty on French wines, 542; protectionism in, 549; income-tax in, 570

Jacksonville, Fla., electricity in, 440; and the Australian ballot, 484

James II., regard for human life in time of, 172

Japan, simplicity of civilization of, 100; militarism in, 157; great advancement of, 157

Jersey City, personal-property tax in, 580 n.

- Jevons, W. S.**, on shorter work-day, 338
- Johnson, Mayor Tom**, and three-cent fare, 424
- Joint Traffic Association**, 137
- Judgments**, 74
- Judiciary** (*see also COURTS*), 13 ff.
- Jury**, trial by, Australasian arbitration attacks, 318; possibly now outgrown, 319
- Kansas** tries a new way of "bleeding", 374
- Kansas City**, conduits for wires in, 444
- Keane, Archbishop**, on slighting of work, 216
- Kipling, Rudyard**, cited, 519
- Kitchens**, public, 30
- Knowlton, Judge**, on conspiracy, 268, 273
- Label**, union, 255; and Boston school-books, 256
- Labor** (*see also ABILITY; CAPITAL; ENTERPRISER; LABOR-SAVING MACHINERY; LABOR-TRUSTS; SCAMPING WORK; TRADE-UNIONS; WAGES; WORK*), in production, 42, 87, 89; Brassey on, 89; in various countries compared, 89; Italian versus negro, in the U. S., 89; conflict between ability and, 90; enterpriser regulates division of, 96; enterpriser's income not at expense of, 98; abounds in poorest countries, 99; returns of, nearly fixed, 104; powerless without ability, 107; rates of division of product, 107; hates corporations, 126; evil effects of scamping, 209 ff.; piecework, 213; pretending and forbidding, 214; Thornton cited, 214; in Australasia, 216; destruction as an aid to production, 217; as affected by communism, 220 ff.; by socialism, 230; a corner of supply of, 243, 269; demand and supply in, 244; coercing the laborer, 253 ff.; and the law, 265 ff.; Parliament and, 270, 277; Prof. Adams and Prof. Seager on labor laws, 283; protecting laborer against himself, 284; against accidents, 287; laborers retiring with a competency, 327; hours of, 329; rise in wages, decrease in hours, 335; increasing ability of, 340; effect of machinery on, 344; under government ownership of railroads, 408; labor logic of John Burns, 451; in English municipalities, 454; municipal, 470; prison, 512; aggressions, 627
- Labor Bureaus**, 261 n., 350, 499
- Labor-Contract**, violation of, 278
- Laborers**: *see EMPLOYEES; LABOR*
- Labor Question** (*see also LABOR*), the leading question of the time, iv; a real struggle, 627
- Labor-Saving Machinery**, strikes against, 270; increases production, 336; creates and supplies new wants, 343 ff.; effect on economic doctrine, 345; attitude of workmen toward, 346; as many producers needed with as without, 346; product cheapened by, 346
- Labor Trusts** (*see also TRADE-UNIONS*), 138, 254 ff., 283, 551, 626
- "**Labor Vote**", the, 407, 454
- Laissez-faire**, democracy and, 488, 489
- Land** (*see also COMMUNAL LAND; FARM COLONIES; FARMS; FEUDAL SYSTEM; LANDOWNERS; LAND-TENURE; PRIVATE PROPERTY; REAL PROPERTY; UN-EARNED INCREMENT*), source

of raw material, 44; evolution of private ownership, 48; wide dissemination of private ownership in America and France, 51 n., 52; advantages of private ownership exaggerated, 52 ff.; people who clamor for everybody having it will not go to it, 53, 54; many of the rich have little or none, 54, 57; valuable only to able men, 55; proposed reversion to government ownership, 55; government taking, by robbery, 56; "unearned increment", 57 ff.; duties of ownership breed rights, 59; increases in value with growth of population, 60; rent, 60, 118; importance of private property in, 62; rights in, limited, 63; the source of all other property, 68; as capital, 117; not a monopoly, 144; agricultural, at a disadvantage under single tax, 597; separated tax on, exclusive of improvements, 601; buildings diffuse taxes more readily than, 602

Landowners, number of, increases with civilization, 51; best guardians of government, 52; most thrifty citizens, 52; pay most of the taxes, 56; robbery of present, advocated, 56; taxes no hardship to, 620

Land-Tax, mark of liberty and progress, 587; the ideal system, 617 ff.

Land-Tenure (*see also* EVOLUTION; FEUDAL SYSTEM; LAND; REAL PROPERTY), source in America, 48; similar among peoples of same grade, 49

Lassalle, F., and labor-saving machinery, 345

Laughlin, Prof., on high wages, 245

Law (*see also* AGENTS; ASSEES; ADMINISTRATORS; AP-

PURTEANCES; BAILMENTS; BANKRUPTS; BETS; CONTRACT, common, statute, administrative, 22, 65 ff.; defined, 65; four principal sources from which evolved, 65 ff.; constitutional, 65 ff.; protects ownership, 68; affecting transfers, 69; of England prevails in U. S. where not in conflict with statutes, 70; maxims of, 77, 163, 165, 169, 179, 188, 192, 193, 394, 405; against usury, 115; against trusts, 136; promises not as binding as contracts in, 161, 164; and religion, 165; contracts that will not be enforced by, 165; imposes self-preservation, 166; but cannot provide wisdom, 167; contracts which are assumed by the, 167; an evolution, 171; possession nine points of the, 175; does not require impossibilities, 183; protects the weak, 189; abhors litigation, 193; judges people by their records, 197; badness of present, does not prove goodness of proposed changes, 220; no magic in laws, 237; natural and civic, 265 ff.; of conspiracy, 267 ff.; industrial, 289; protecting the weak and foolish even against themselves, 351; a luxury of the rich, 352; cannot discriminate between people, 352; cannot use wealth wisely, 354; does not bother with trifles, 394

Laziness responsible for bad government, 7

Leases, 77

Lecky, on city debts, 469

Legal Aid Societies, 352

Legislation, effects of corporations and trusts on, 140; class, 316

Legislatures, 13; in local government, 16; corrupted by

trusts, 140; Nature and human nature before, 598; abolition of, favored by Godkin, 625

Lessee, 78 ff.

Liberty, "eternal vigilance", 7, 35; Anglo-Saxon principles of, 11, 35; rights to, 32 ff.; limits, 32; barbarian and civilized, 33; curtailed by others' rights, 33; duties balancing rights to, 34; state's right to restrain, 34; in the U. S. Constitution, 35; free press, free assembly, 36; the man with a "pull", 37, 142, 407, 408, 522; freedom of opinion, 38; laws threatening, 38; and paternalism, 286; of individual, 288

Libraries, 490, 504

Liens defined, 175; taxing, 613

Life, right to, 25 ff.; the state's claims, 25, 136; humanity's claims, 25; professional claims, 25; duty to risk, 25; regard for, in time of Henry VIII. and James II., 172; at present, 172; influenced by taxation, 532

Life Estate, 72, 80

Life-Insurance in Australasia, 460, 501

Lighting, 435 ff.

Limitations, statutes of, 74, 169

Lincoln, Abraham, rise of, 155, 158

Liquor Traffic, limitation of, by taxation, 540

Literature, damage to, in the U. S., 414

Liverpool, docks in, 396; wastefulness of water-supply in, 434

Livery of Seisin, 69

Living, right to a, 54; cost of, 335, 336

Living Wage, 231, 286, 306, 314; and state socialism, 295

Lloyd, H. D., on compulsory arbitration, 300, 304 ff.

Loan Society, Provident, 498

Local Governments, overlappings of, 9; functions, 10, 17; municipalization, 451, 525; national parties and, 475-478; strong, the basis of Anglo-Saxon liberty, 480; best in Great Britain and Germany, 525; worst in America, 525

Local Option in taxation, 598

Locke, John, single-tax theory of, 596

Lockouts, 249, 410 n.

Locomotive, industrial change effected by, 345

Lodging-Houses, 498

Logansport, Ind., electricity in, 440

London, municipal operation of trams in, 421; graft in, 421; pipes in railway tunnels, 443; housing the poor in, 493

London, Jack, and socialism, 239 ff.

Loom, influence of, upon "the great industry", 345

Los Angeles, removal of elective municipal officers in, 488

Lower depends on higher, 93

Luck, as a way to wealth, 209

Lunatics: see **INSANE**

Luxuries, prices of, first to fall in hard times, 346; England taxes mainly, 615

Machinery, Labor-Saving: see **LABOR-SAVING MACHINERY**

McKinley Tariff Bill, 546

McPherson, Judge, on picketing, 275

Mahomet and the communal system, 154, 155

Mahoney, T. J., quoted, 275 n., 280

Maine, Bureau of Industrial Statistics of, on cheapened food-supply, 329

Majority, wrong-headed, worst tyrant known, 255

"**Making Work**", 212, 217, 218

Mallock, W. H., on wages' share of product, 107, 110; on improved condition of working classes, 331 *n.*

Managers, of government institutions, 227; of political pulls versus managers of industry, 228

Marcosson, Isaac F., quoted, 261 *n.*

Marriage (*see also HOME*) feudal disposal in, 47

Marx, Karl, 107; "rich richer and poor poorer", and his "bronze law", 345

Massachusetts, Torrens system in, 84; increase of wages in, 330; improved condition of machinists in, 330 *n.*; probated estates in, 331; police in, 480; and the Bell Telephone Co., 569, 570; personal-property tax in, 581 *n.*; taxation of mortgages in, 611

Master and Servant (*see also SERVICE*), 196 ff.

Mayo-Smith, Prof., on "unearned increment", 61; on prices, 329; on profit, 340

Meat Inspection Bill, 138

Metropolitan Traction Company, broad-minded management of, 429

Meyer, Hugo R., on municipal operation in Great Britain, 449 ff., 525

Michelet, J., on effect of private property in land, 51 *n.*

Milan, pipe-galleries under sidewalks of, 444

Militarism, decline with barbarism, 48, 156 ff.; effect of Wars of the Roses upon, 48; a form of status, 156; in Japan, 157; income-tax characteristic of, 570

Mill, John Stuart, proposes government ownership of land, 55; on law of wages, 306; on overgovernment, 448; on real-

ty-tax, 588; on the ideal government, 624

Mine Workers, United, restriction of output, 215

Minimum Wage, and sliding scale, 111; versus living wage, 286; Prof. Seager on the, 286; in Australasia, 292

Minors, contractual disabilities of, 187 ff.

Missouri, experience with railways, 399

Mitchell, John, on loss due to strikes, 252

Money (*see also PAPER MONEY; SILVER*), government affects worth of, 8; government manufactures, 9; can be hired by the man who can use it well, 117; when to be paid back, 168; legal tender, 187; power to print paper, questioned by many lawyers, 187; not much of it essential to enjoyment, 348; reasons for studying, 359; general considerations on, 359 ff.; Tom Watson on, 359; barter and, 360; swindling by, 361; kinds of, 361; qualities of, 362; legal tender of bad, 362; definition, 363; bad buys less than good, 363; value in paper, 363; fiat money, 364; token money, 364; redemption money, 364; some American experience, 366 ff.; paper money cheats creditors, 366; and raises prices, 367; "never mind Europe", 367; effect of money not redeemable in gold, 367; depreciation of silver dollar, 368; why coins not made heavier, 369; American remonetization in '78 and '90, 369; cheap-money fallacy, 370 ff.; the rapacious fooling the ignorant, 370; who profits by light-weight silver?, 371; poor not the debtor class, 372; nor the class that handles least

gold, 372; the panic of '93, 372 (*see also PANIC OF '93*); government banking, 375; "sixteen to one", 376; improved trade balance supplies gold, 377; light-weight silver money no new scheme, 378; poor, one of the social panaceas, 378; money questions no longer a distinct issue, 378; needs for the future, 380 ff.; best safeguard, 380; gold the safest material, 381; paper better than light-weight silver, 381; safety in large bills, 381; no absolutely safe material for, 381; only safe silver dollar, 382; objections to all government notes, 382; yet coin insufficient, 383; good paper currency preferable, 384; but not from government 385; essentials of banknotes, 385; "wild-cat" money, 385; essentials of a sound system, 386; rag money, 386; basis for elastic currency, 387; no safe currency based on commercial paper, 388; farmer's needs, 389 ff.; cheap, 536; a medium of exchange, 550; superfluous, 603

Money-Lending, government success in, 459

Monopolies (*see also COMPETITION; CORPORATIONS; TRUSTS*), 126, 132 ff.; statute against, in Parliament, 126; American courts and, 126; objection to, 127; limit to property rights, 136; state control, 136; against common and statute law, 136; law of 1890 against, 136; difficulty of getting advantages out of anti-monopoly laws, 136; controlled by corporations, 138; state interferences with, 139; natural, 144 ff., 526; why railroads are, 145; franchises, 145; become personal property,

146; state competition with, 291; and privilege, 463; the ideal field of the state when practicable, 468; municipalization a defence against, 471; government regulation of natural, 526, 627; government service outside of demoralizing, 528; social and artificial, 627

Moral Atmosphere created by Gautama, 93; by Christ, 93

Morality, growth of, 115; sound, promulgators of, create value in material things, 102

Morrisey, Grand Master, on contract-breakers, 158

Mortgages (*see also LAND; REAL PROPERTY*), 70, 76, 123; chattels, 150; double taxation of, 608 ff.; a debt, not a value, 608; mortgagor generally pays tax indirectly, 609; not properly real estate, 610; in different states, 610; mortgagor paying mortgagee's tax, 611; why tax mortgages and not notes?, 612

Mulhall on wages in England, 331, 332; on taxation, 531

Municipal Corruption, American, 473

Municipal Difficulties, American, 473 ff.; New York in 1870, 473; in 1894, 474; city works the plums of politicians, 474; New York in 1898, 474; national parties in local affairs, 475 ff.; this partly caused by method of electing U. S. senators, 476; bad mixing local politics with state and national, 477; civil-service reform as a remedy, 478; Professor Goodnow on separation of state and local functions, 479; education, 480; police, 480; America alone in confusing local and national politics, 481; American wealth and good nature promote carelessness, 482; debts

of municipalities, 482; corruption of voters under the guise of charity, 483; proletariat voting, 484; Tilden Commission's proposed remedy, 485; local suffrage rights differ from others, 485

Municipalities, English, dog-in-the-manger policy of, 450; obstructive, 451; strangling private enterprise, 451, 470

Municipalization (*see also MUNICIPAL DIFFICULTIES*), best where people watch it most, 396, 415, 435; of railroads, 420 ff.; of waterworks, 432; of gas-works, 435, 436; Prof. Daniels quoted, 436; in New York, 437; of electricity, 440; of the telephone, 442; tunnels for pipes, wires, etc., 443; of advertising signs, 445; Piatonists and Aristotelians on, 447; obstructive, 451; especially to inventive talent, 470; dangerous to purity of government, 453; objected to in Glasgow, 454 n.; English elections against, 455; leaves out able men, 455; Australasian experience with, 456 ff.; summary and conclusions, 468; in England municipal trading increases taxation without proportionate results, 469; desirable only as defence against monopoly, 471; as training in citizenship, 471; least in United States, 524; increases with independence, 524; decreases with police control, 524; increases with good local government, 525; necessary limits, 526; mainly determined by natural monopoly, 526

Municipal Operation, of trams in London, 421; two reasons for, 424; Great Britain versus America, 426; deteriorating private service may compel, 430; latest aspects of, 447 ff.;

in Great Britain, 447; retards development, 449; municipal ownership loaded with, in Great Britain, 452; in Omaha, 461. Political Science Association on, 462; a question of democracy on trial, 465: has its largest following among those who pay no taxes, 466; in a university town and a labor town, 466; fallacious reasoning, 467; taxes increased with, 531

Municipal Ownership (*see also MUNICIPAL OPERATION*), Hearst and, 395; Prof. H. R. Meyer on, 449 ff.

Municipal Trading (*see also MUNICIPALIZATION*), opposition to, 421; Major Darwin on, 442, 447, 448; Lord Avebury on, 448, 454 n.; Robert Donald on, 454 n.; taxation and debt increased by, 455, 469; Parliament and, 481; housing the poor, 493

Murders and trade-unions, 254
Museums, 490

Names, no magic in, 237
Napoleon III. makes over Paris, 493

National Association of Manufacturers, 261

National Citizens' Industrial Association, 261

National Government, 11, 18; in local politics, 475, 481

National Metal Trades Association, 261 n.

National Municipal League, 420 n.

Natural Law and civic law, 265 ff.

Nature, laws of, 23, 114; when an over-indulgent parent, 26; a hard mother to the ineffective man, 114

Navies produce value, 102

Necessities, prices of, tend to keep up in hard times, 346

- Need and desert**, 240
Negotiable Paper, 148 ff.
New Hampshire, personal-property tax in, 581 n.
New South Wales (*see also AUSTRALASIA*), state operation of railways in, 409
Newton, Isaac, 93
New York City, instances of scamping work in, 212; the stone-polishers' union and the Hotel Savoy, 217; street-railway strike in, 273; ferry franchises in, 395; municipal ownership of street railways in, 423; subway in, 423; frightful swindles in connection with water-supply of, 433; municipalization of lighting plant and surface railways, 437; only one voter in ten a taxpayer, 472; municipal difficulties in, in 1870, 473; in 1894, 474; education in, 480; police in, 480; management of parks in, 490; Fine Art Commission of, 491; housing the poor in, 494; Provident Loan Society in, 498; Charity Organization Society in, 499; most expensive city in the world, 538; secret stills in, 539; only one man in twenty-five pays direct taxes, 558; personal-property tax in, 579, 580 n.; bad government of, an obstacle to real-estate investment, 592; equalization of taxation in, 593; single tax in, 600; separated tax in, 601; rental-value tax in, 604; taxation of mortgages in, 609
New York State, interest law in, 119; labor laws of, 284; punishes attempts at suicide, 285; accidents to laborers in, 287; idiots vote in, 486 n.
New Zealand (*see also AUSTRALASIA*), adjustment of labor troubles in, 299; first Compulsory Arbitration Act, 299;
Judge Backhouse on, 308; government coal-mines in, 459; state life-insurance in, 460; old-age pensions in, 501; taxation of mortgages in, 611
Niagara Falls, neighborhood of, improved by state, 139; a natural monopoly, 144
Non-taxpayers, who are, 506
Non-unionists, their right to work, 266; immigrants enter U. S. as, 284
Non-voters, where best taken care of, 487
North Carolina, secret stills in, 539
Northern Securities Co., government suit against, 137
Nostrums, rapid accumulation of, 625
Notes: *see PROMISSORY NOTES*
Oath, 164
Obligation of Contracts, 317
Obvious Direct Taxes: *see DIRECT TAXES*
Ohio, labor bureaus in, 500; and the Standard Oil Co., 569; personal-property tax in, 580 n.
Old-Age Pensions, 314, 500, 501
Omaha, government operation in, 461
Open Shop, 251, 261 n., 262; strikes against, illegal, 270
Opinion, paradoxes of, 104
Opportunity, no lack of, 112; able to embrace it, 112
Option, 178, 191
Organizers of transportation and exchange produce value, 102
Orphans, care of, 517
Orphans' Court, 47
Output, restriction of, 215
Overwork another name for overworry, 348
Panaceas: *see SOCIAL PANACEAS*

Panama Canal, material to be used in building, 215

Panic of '93, 372 ff.; begins with alarm in Europe, 373; business suffers 373; Kansas "tries a new way of "bleeding", 374; hoarding begins, 374; the banks and the poor, 374; Cleveland stops the panic, 374; but at heavy cost, 375

Paper Money, 361 ff.; cheats creditors, 366; raises prices, 367; better than light-weight silver, 381; safety in large bills, 381; objections to all government notes, 382; good paper currency, 384

Paris, public workshops in, 30, 230, 231; tunnel system in sewers of, 444; gas-pipes and electric wires under sidewalks of, 444; deteriorating under universal suffrage, 486; opera a botch, 490; corruption attending street openings in, 493; charity schools in, 520

Parks, 490, 505

Parks, Sam, 263, 297

Parliament, power to change constitution, 66; people can change at any time, 66; statute against monopolies, 126; and labor, 270, 277; empowers municipalities to supply facilities, 450, 451; and municipal trading, 481

Partnership, 121, 195

Part Payment, in contracts, 174

Party Walls, 81

Passaic, bad water-supply of, 433

Pasteur and bacteria in water, 433

Paternalism, 285; too much, enervating and against liberty, 286

Paupers, children of divorced parents, 2; in London, 332; constitutional, 349, 507; neg-

lect increases the number, 508; wastes and stupidities in taxation largely due to votes of, 622

Pawnshops, 497

Peabody, George, his fortune rightly acquired, 114; his rise, 155; benefactions of, 490

Peel, Sir Robert, police made a national body by, 480

Penn, William, fairness of his purchase of Pennsylvania, 58

Pennsylvania, purchase of, by Penn for a few beads a fair bargain, 58; labor laws of, 284

Pensions, old-age, 314, 500, 501; and the tariff, 546

Personal Property (*see also ABILITY; CAPITAL; WEALTH*), evolution of rights in, 42, 43, 87 ff.; defined, 67; transfer of, 69; law of, 148 ff.; seldom registered, 148; passed by endorsement, 148; can take one's own wherever found 149; ownership can be lost without neglect, 150; can be mortgaged without registry, 150; agreements made regarding, 151; the great field of contract, 151; law of contracts concerning, 173 ff.; transfer of ownership of, 177; quack schemes for distributing rights in, 208 ff.; remedies on trial, 289 ff.; proved methods for diffusing rights in, 325 ff.; four fifths exempt from taxation in New York, 598

Personal-Property Tax, 573 ff.; uncertain of diffusion, 573; tends to double taxation, 574; effect on prosperity, 575; Wells quoted, 575; personal property hard to find or appraise, 577; a premium on lying, 578; views of authorities, 578; operation of natural laws, 578; abolition of, proposed, 578; in New York, 579; statistics, 579 n.; "publicity" a foolish

means toward a foolish end, 582; "homogeneity" fallacy, 582; effect on corporations, 583 ff.; abandoned in many places, 618

Personal Relations, law of contracts for, 190 ff.

Philadelphia, bad water-supply of, 433; municipal management of gasworks in, 436, 437

Philanthropy, wise, necessary to civilization, 349

Philosophers control policies of nations, 363

Physiocrats, single-tax theory of, 596

Picketing, 28, 282; unlawful, 275, 410 n.; Judge McPherson on, 275; Judge Quarles on, 276

Piecework, 213

Pipe-Galleries, underground, 443

Pitney, Vice-Chancellor, quoted, 279

Platonists and Aristotelians on municipalization, 447

Pledges (for loans), 151, 185

Police, 480

Political Science Association, testimony on municipal operation, 462 ff.

Politicians running industries, 140

Politics, and "civics", xi, 4, 5; duties of rich men in, 355; only "self-made" rich men encouraged to go into, 355; effect of branch banks on, 390; in municipalization, 451; city works and, 474, 485; national parties in local, 475 ff.; America alone in confusing national and local, 481; under mask of charity, 483; in Chicago labor bureau, 499; tariff the cause of frightful corruption, 545; pensions and, 546

Poor Class, get larger proportion of wealth than the rich, 221 n., 331 n.; not the debtor class, 372; nor the class that

handles least gold, 372; superfluous money given to, 603

Poor Law, the English, 29, 230, 231

Porter, R. P., on municipal trading in England, 454 n., 456

"**Possession** nine points of the law", 175

Postal Savings-Banks, 332 n., 498

Post-Office, 411; favoritism to papers and periodicals, 412; in the U. S. run at a loss, 414; government versus private enterprise, 414; C. W. Burrows on postal policy, 414 n.; stamps from private companies, 415; best where people watch it most, 415; *Evening Post* quoted, 418

Poverty (*see also CHARITY; EDUCATION; RECREATIONS AND ASSISTANCE; WEALTH*), cause of, 61, 208, 220; good resulting from, 115; seldom blameless, 348; constitutional paupers, 349, 507; government aid, 350, 351

Powderly, T. V., cited, 297

Prescription, rights by, 74

President, election of the, 478

Prices, regulated by demand and supply, 129; advance of, in America, 1901-6, 132; in oil, 132; low prices alone justify trusts, 135; law of, 136; trade-unions agreeing to keep up, 138; fixing, 139; decline since middle of nineteenth century, 328 ff.; decrease comes largely from capital's share of product, 339; and from labor's increased ability, 340; and from diffusion of honesty, 341; effect of labor-saving machinery, 344 ff.; in bad times, 346, 347; paper money raises, 367; under high tariffs, 377; affected by amount

of money in circulation, 383; and high taxes generally, 538

Principal, authorized acts bind, 190; responsible for agent's wrong-doing, 193

Printers, strike of, 88, 251, 254; making work for, 217

Prisoners: *see CRIMINALS*

Prison Labor, 512

Privacy, 565

Private Property, 40; limited, 40; evolution of rights of, 42; sources, 42; evolution of, in land, 48; stimulates ability, 49; increases with civilization, 51; in land, effect of, 51 n.; advantages of, in land exaggerated, 52; all schemes to abolish, are retrogressive, 62; of universal importance, 62; evolves with contract and freedom, 155; essential to advance beyond status, 157; general government production attacks, 229

Probate Courts, 47, 206

Product, destroying, 217; cheapened by labor-saving machinery, 346

Production, not all by hand, 101; large, is cheap, 133; not commerce, 137; increase in, 336; rising with shorter work-day, 338, 339; variety of, diffuses wealth, 343; decrease in, in bad times, 346

"**Profit in the last hour**", fallacy of, 337

Profit-sharing, municipal, 422

Progress in the betterment of man's estate, 325; made under individualism, 232, 235; high-pressure, under socialism, 241

Progressive Taxation, 565

Proletariat, politics and the, 484, 485

Promises versus contracts, 161

Promissory Notes, 76

Promoters of railways and trusts produce value, 102, 103;

heavy toll taken by, 104; and combinations, 134

Property, Rights of, (*see also PERSONAL PROPERTY; PRIVATE PROPERTY: REAL PROPERTY*), 40 ff.; barbarian's idea of, especially in land, 45; not all tangible, 109; as capital, 116 ff., limited, 136

"**Protection**" (of industries) (*see also TARIFF DUTIES*), 377, 544, 547; effects of the Civil War on the tariff, 545; wages under, 548; numbers concerned, 549; who benefited by, 549; gluts, 550; effect on trusts, 551; labor trusts eager for, 551; conclusions, 551; causes of American system, 552; the tariff changed twenty-five times between 1862 and 1890, 558; results of, 616; injustice and corruption of protective system, 619; manufacturers and, 622

Providence, R. I., revenue from street-railway franchises in 423, 428

"**Providential**" Facts, 323

Prussia, Dr. Soetbeer on income-tax statistics of, 333; cost of collecting taxes in, 558 n.

Public, coercing, 255 ff.

Publicity, desirability of, 467

Public Policy, 204, 270

Public-service Corporations, Prof. Adams on, 410; Prof. Rowe on, 464

Public Utilities, Commissioner of, 422

Public Works (*see also MUNICIPAL DIFFICULTIES; MUNICIPALIZATION; RAILROADS; ROADS; STREET RAILWAYS; WATERWORKS*), *extra-municipal*, 391 ff.; roads, 391; bridges, 393; ferries and docks, 395; railroads, 396; post-office, 411; telegraph, 415; *municipal*, 420 ff.; street railways, 420; water-

works, 432; gasworks, 435; electricity, 440; telephone, 442; tearing up streets, 443; tunnels for pipes, wires, etc., 443; advertising signs, 445; summary and conclusions on municipalization of, 468 ff., 523 ff.; city works the plums of politicians, 474, 485; and superfluous money, 603

"Pull", the man with a, 37, 142; in railroad management, 407; in education, 522; in taxation, 591

Pullman, G. M., and civic responsibility, 142

Pursuit of Happiness, right to work, 26 ff.; rights to the, 39 ff.; a general name for many rights, 39; restricted, 39, 40, 63

Quantum meruit, 167

Quantum valebat, 168; some limits of, 188; enrichment, 188

Quarles, Judge J. V., on picketing, 276

Quasi-Contractual Relations, law of, 199 ff.; trusteeship, 199; assignees, 200; safeguards, 200; administrators, 201; devolution of intestate estates, 201; executors, 202; wills, 202; guardianship, 206; need of probate courts, 206; trustees for defectors, 207; court supervision of trustees in general, 207

"Quick" Securities, 384

Rae, John, on eight-hour day, 337

Rag Money, 386

Railroad Rate Bill, 138, 405, 406

Railroads (*see also EMINENT DOMAIN; RIGHT OF WAY; STREET RAILWAYS*), German employees' accident insurance, 30; right of way, 64; right to build often sold before work is begun, 109; service improved by commercial

travelers, 129; and anti-trust law of 1890, 138; Railroad Rate Bill, 138, 405, 406; rates regulated by law, 139; setting a limit to profits they shall divide, 139; why monopolies, 145; streets taken for, 145; in United States, 396 ff.; in England, 397, 401; in France, 397; in Germany, 397 ff.; in Italy, 397, 398, 407; superior service in England and America, 397; Bryan favors government operation of, 399; Roosevelt and, 399; relations between government and, 400, 401; American construction less thorough than in Europe, 400; and incidentally less careful of safety, 401; grade-crossings almost unknown in Europe, 401; freight discriminations, 401; consolidation and competition, 402; freight and passenger rates comparatively low and steadily declining, 403, 405; constitutional questions, 403; charters for, 404; taxation of franchises, 404; regulating charges, 405; bankrupt railroads, 405; unsuccessfulness of government regulation not complete argument for government management, 406; "labor" under government operation, 408; in Canada, 408; Canadian experience, 408; government aid and regulation, 411

Ramapo scheme of water-supply, 433

Raw Material a source of property, 42; derived originally from land and sea, 44

Real Estate: *see REAL PROPERTY*

Real Property (*see also DEEDS; LAND; PRIVATE PROPERTY; REALTY-TAXES*), rights to, 40 ff., 44 ff.; early conditions, 44; under feudal system, 46; title,

how acquired, 59; occupier's rights in improvements, 60; law of rights in, 65 ff.; defined, 67; laws protecting ownership, 68; damages for trespass, 68; right of ejectment, 68; transfers, 69 ff.; contracts of sale, 69, 70; deeds, 70, 76, 77, 78; life-estate, 72; dower and courtesy, 72; registry, 73, 77; title-search, 73; judgments, 74; prescriptions, 74; title insurance, 74; clouds on title, 75; delivery of deed, 76; mortgages, 76; bonds, 76; equity of redemption, 76; leases, 77; fraudulent transfer, 78; technical meaning of "estate", 78; estates for years, 78, 79; life-estates, 80; estates at will, 80; appurtenances, 80; riparian owners, 81; restricted estates, 83; idle, 563; taxation restricted to, 600; some unimproved, useless, 601

Realty: *see REAL PROPERTY*

Realty-Taxes (*see also APPROPRIATION-TAX; SINGLE TAX; SEPARATED TAX*), *in general*, 586 ff.; objections, 586; history, 586; incidental to high civilization, 587; diffusion, 587; views of economists, 588; fact versus theory, 588; effects on producers, 589; stimulate production, 589; sure to be paid, 590; easy to assess, 590; cheapest to collect, 591; all owners must always pay part, 591; summary for and against, 591; opinion of the Fathers, 592; equalization, 593; *varieties*, 595 ff.; realty-tax proper, 595; single tax, 595, 596; separated tax, 601; appropriation-tax, 603; *rental-value tax*, 604; not a real-estate tax, 604; not double taxation 605; should be on one residence only, 605; shifting, 606; *franchise-tax*, 606;

virtually a 'real-estate' tax, 606

Reciprocity Treaties, 542, 547

Records, law judges people by their, 197

Recreations and Assistance (*see also CHARITY; EDUCATION*), 490 ff.; general government production attacks property, contract and charity, 229; museums and libraries, 490; parks, 490; clearing slums, 491; housing the poor, 494; personal conveniences, 494; army outfitting, etc., 494, 495; economy and civilization both require charity, 495; hospitals and asylums, 496; relief to individual poor, 497; pawnshops, 497; savings-banks, 498; lodging-houses, 498; Charity Organization Society, 499; labor bureaus, 496; insurance against idleness of old age, 500; general conclusions regarding charity, 501; mutual help better than government help, 502; the Church, the State, the philanthropist, 502; taxpayers and, 503

Redemption-Money, 364

Reeves, W. P., father of first Compulsory Arbitration Act, 298, 299; quoted, 301, 307 ff.; arguments for enlarging functions of state, 461

Registry (of real estate), 73; rights of third parties, 77

Regulation, government, of monopolies in America, 405, 406

Relief, public, (*see also CHARITY*), 30

Religion and law, 164

Rent, 60, 118

Rental-Value Tax (*see also REALTY-TAXES*), 603 ff.; on consumption, 604; not a real-estate tax, 604; New York and, 604; may ultimately replace vampire-taxes, 615; Prof. Seager on, 618

- Representative** defined, 17
Reputation, right to, 41
Respondeat superior, 193
Revenue: *see TAXATION*
Ricardo, D., on realty-tax, 588
Richmond, revenue from street-railway franchise in, 423, 428; municipal gasworks in, 437
 "Rich richer and poor poorer", 345, 556; not true in civilized countries, 328
Right, the adjective, defined, 113
Right of Way (*see also APPURTENANCES*), railroad 64
Right to Work (*see also SCAMPING WORK; STRIKES; WORK*), defined, 26 ff.; and trade-unions, 26; subject only to the state, 26; interferences, 28, 38, 214; duties conditioning, 28; strikes, 28; boycott, 28; involves rights of property and exchange, 40; limitations, 40, 255; involves right to contract, 40; and to reputation, 41; government protection, 41, 409; non-unionists, 266; property in, 282
Rights, defined, 6, 21 ff., 23; protection of, a function of government, 6; citizen's, regulated by nation in two fields, 11; impose duties, 21; moral and legal, 22; classified, 23; rights measured by duties, a law of Nature, 23; and duties imply each other, 23, 507; to life, 25 ff.; to work, 26 ff., 410; to liberty, 32 ff.; Bill of, 35; to pursuit of happiness, 39 ff.; to real property, 40 ff., 44 ff.; of property, 40 ff., 44, 109, 116 ff., 136; under contract, 40, 152 ff., 159 ff.; to reputation, 41; to a home, 53; to a living, 54; in improvements, 60; of way, 64; by prescription, 74; value of some intangible ones, 100; to demand versus to prohibit, 152
Riparian Owners, 81
Roads, land beside, 81; in general, 391 ff.; as spreading civilization, 391; evolution in our race, 392; bad American organization, 392; local independence obstructive of good, 393; splendid English, 393; tolls on, 393
Robbery, government taking land by, 56; schemes of, by taxation, 568, 604
Rochester, street railways in, 427
Rockefeller, J. D., and the gateway of opportunity, 239
Rogers, Thorold, on income-tax, 571
Romans the great road-builders, 391 ff.
Roosevelt, Theodore, and unionists, 265; and injunctions, 281; his coal-strike commission, 298; and the railroads, 399
Rowe, Prof., on public-service corporations, 464
Rudolph of Hapsburg and the feudal system, 155
Ruskin and socialism, 233
Russia, serfs of, 45, 156; communal land in, 45, 62; without a constitution, 66; labor in, 90; not much changed from condition of status, 156; most forward in socialism, 456; taxation in, 533; and the Dingley Act, 543
Ryots of India 45
Sale, contracts of, for real estate, 69, 70; and delivery, 173; as affected by statute of frauds, 173; by part payment, 174; under prior lien, 175
Salvation Army's Farm Colonies, 53

San Francisco, earthquake in, 235, 244, 434; and street railways, 424; personal-property tax in 580 *n.*

Savings, protection of rights in, 116; of laborers now put into provident societies instead of homes, 124

Savings-Banks, 332 *n.*, 374, 498; taxation of, 584

Scamping Work, 209; "The Crime of Mrs. Derrick", 210 *n.*; further illustrations, 210 *n.*; keeps the scamper out of jobs, 212; scamper gets only one profit but pays many, 213; and cannot long receive good wages, 213; piecework, 213; pretending and forbidding labor, 214; no need of industrial suicide by, 343; and taxation, 536

Schurz, Carl, as a citizen, 355

Scotland, Glasgow Bank failure, 122; improved dwellings of the poor in, 332 *n.*, 493; branch banks in, 390; municipal gas-plants in, 436; extension of street lighting in, 436; objection to municipal trading in, 454 *n.*; why Scotch whiskey smells of smoke, 539

Scribner, Charles, spirit that actuated, 142

Scutage (shield-money) imposed by Henry II., 48, 587

Seager, Prof., on trusts, 135; on conspiracy, 274, 275; on labor laws, 283; "protecting the laborer against himself", 284; on regulation of wages and hours, 285; on the minimum wage, 286; on rent-tax, 618

Seal (on instruments), 70, 71, 75, 123, 168

Seattle, municipal car-lines rejected by voters, 424

Securities, 122; European investments in American, 123; quick, 384

Seisin, livery of, 69

Self-defence, state's right of, 288

Seligman, Prof., on personal-property tax, 581 *n.*; on realty-tax, 588

Senate, U. S., ten thousand years of history required to get up to, 242; economic investigations by, 329; method of electing members of, bad for local government, 476, 478

Separated Tax, on land exclusive of improvements, 601 ff.; in New York, 601; buildings diffuse taxes more readily than land, 602; improvement encouraged by, 602

Serfdom, 153

Serfs of Russia, 45

Service, 164, 196 ff.; contracts for, 167; discharge for cause stops pay for rest of term, 196; discharge without cause, or leaving for cause, does not, 197; both employer and employee bound for entire term, 197

Settlements (University, etc.), 484, 520

Shaw, Albert, on municipal government, 420 ff., 482 *n.*

Shea, C. P., on principles of trade-unionism, 178

Shearman, T. G., on street-railway franchises, 607

Sherman Interstate Act, 138; unions and, 266 *n.*

Shield-Money, 48, 586

Ship of State not built for speed, 241

Sickness: see DISEASE

Sigel, Franz, as a citizen, 355

Signs, advertising, a source of municipal revenue, 445

Sill, E. R., cited, 92

Silver (see also MONEY), agitation of 1890 destroyed values, 102; price of, rising, 368; and the U. S. Treasury, 372 ff.; supply of, 375

Single Tax, 595; paid by Nature, 582; Locke's theory, 595; Henry George's, 595, 621; Walpole's, 596; physiocrats' theory, 596; diffusion on different grades of property, 597; agricultural land at a disadvantage under, 597; local option in taxation, 598; effect of, if suddenly imposed, 599; experience, 600; an evolution that is nearly accomplished, 600; Australasians find it satisfactory, 600; boon to the poor, 621; why delayed, 622 ff.

"Sixteen to One" (*see also MONEY*), 376

Slavery, 153-155

Slaves of America, 154

Sliding Scale, 111

Slums, 491; clearing, possible only under eminent domain, 492

Smith, Adam, on bad tax laws, 532; on realty-tax, 588

Smith, Postmaster-General quoted, 413

Smugglers, 541

Sociability, happiness in, 34

Social Influence and Control, 2; through the family, 2; through public opinion, imitation, education, and government, 3

Socialism, 220 ff.; Spencer and, 27, 570, 629; as a remedy for corruption and trusts, 140; attacks contract, 158; defined, 225; would keep wages down, 226; impracticability of political management, 226; losses to education, charity and liberty, 226; forcing ability, 227; futility of attempting it by eminent domain, 230; a premium on laziness, 230; effect on laborers, 230; would destroy freedom, 231; the unemployed, 231; and individualism, 232; a vague name, 233; Ruskin and

Tolstoy and, 233; four uses of the term, 234; against competition, 234; earthquakes and fires under, 235; greed and graft and, 238; Jack London and, 239 ff.; capitalism and, 239; expression of the ideals of, 240; high-pressure progress under, 241, when possible, will be needless, 242; living wage and, 295; arbitration a step toward, 319; Russia most forward in, 456; logical conclusion of, is social war, 570

Socialists, their hope of success, 242; and washerwomen, 495

Social Panaceas, 291, 472; socialism, 219 ff.; strikes, 334; poor money, 378

Society, its control of the individual 1 ff.

Soetbeer, Dr., on Prussian income-tax statistics, 333

Soup-Houses, public, 31

Sovereign defined, 12

Spain, beggars in, 349

Sparta, skill in theft a virtue in, 157

Specific Performance, 198

Speculation, legitimate, steady prices, 353

Spencer, Herbert, 93; and socialism, 27, 570, 629; created value in material things, 103; Law of Equilibration, 327; on American good nature, 483

Squatters, 68

Stamp-Taxes, 553; both direct and indirect, 554; often merely a petty nuisance, 554

Standard Oil Co., 255; forced out of Ohio by taxation, 569

Stanford, Leland, 238

State Government, 10, 18

State Socialism and status synonymous terms, 319

Statistics, vice of, 458; value of, qualitative, 459

Status, 154; versus contract,

154; militarism a form of, 156; why private property essential to advance beyond, 157; state socialism synonymous with, 319

Statute of Frauds, 69, 174, 180; of Limitations, 74, 169

Statute Law: *see* LAW

Steam, industrial effect of, 345

Steamboats in competition, 131

Stephenson, George, influence exerted by his locomotive, 345

Stewart, Alexander, economies effected by, 98, 101; fortune of, 114; usefulness of, 353

Stickney, A. B., on the railroad problem, 402

Stills, secret, 539

Stock Exchanges, 123, 124

Stocks, common and preferred, 122; and bonds, differences between, 123; not all dealt in at exchanges, 124; for whom good investments, 124; by whom owned, 124; civic questions answered by, 124; watered, 134; endorsement on, 149

Street-Begging, 499

Street-Openings, 492, 493

Street Railways, 420 ff.; evolution of, 420; in Germany, 420; in England, 420; in Scotland, 420; in Ireland, 421; in Hamburg, 421; in New York, 428; municipal operation increasing in England, little on Continent, in America none, 420; municipal sharing of profits advancing in America, 422; government inspection of, 422; reasons for municipalization, 424; in San Francisco, 424; increment in franchises, 428; should be leased but not sold, and each city's under one management, 428, 429; public

should share in profits rather than receipts, 428

Strikers (*see also* STRIKES), government suits against, 137

Strikes (*see also* SCAMPING WORK), 104, 244 247 ff., 411; when justifiable, 28; "The Crime of Mrs. Derrick", 210 & truckmen's, 88; printing, 84, 251, 254; Prof. Adams on, 252, 410; leading statistics of, 252; non-union compared with union, 252; decrease of since 1903, 253 funeral-drivers', 256 ff.; in Chicago, 261 n.; when illegal, 263, 270, 271; avoiding, 263; right to, 267; against labor-saving machinery, 270; street-railway strike in New York, 273; and arbitration courts 297; coal-strike commission, 298; in Australasia, 298, 307, 323; damages in, 301; in America, 324; in the twentieth century, 329; "sympathetic", immediate interest and the, 271, 311; conflicting laws on, 271 ff.; effect of compulsory arbitration on, 302; as affected by government ownership of railways, 408; railway, in New South Wales, 409

Struggle for Existence ceasing to be a brute struggle, 630

"**Sturmsee**" quoted, 259, 278, 281

Subways, 443, 444

Succession Tax in England, 331

Suffrage (*see also* VOTERS; UNIVERSAL SUFFRAGE), limitation of, 484 ff.; in Europe generally, 484, 485; plan of Tilden Commission, 485; in Berlin, 486; local rights differ from others, 485; limited local, in all well-governed cities, 485; elevating the, 487; should be improved, 629

Sugar Trust, Knight case

against, 137; and the Wilson Bill, 140, 546

Supply and Demand, 129

Supreme Court, on conspiracy, 268; and eight-hour law, 284; affirms propriety of labor laws, 285; appointment of, 478; income-tax of '94 declared unconstitutional by 553, 570; and taxation, 610

Suretyship, 180

Surrogate's Court, 47

Sweating in Australasia, 292-294

Switzerland, roads in, 393; income-tax in, 571

Taff-Vale Case, 277

Tammany, 430, 463; organized to influence voters, 483

Tariff: *see TARIFF DUTIES; PROTECTION*

Tariff Bill, defeated by Sugar Trust, 140, 546; McKinley, 546; Wilson, 546

Tariff Duties (*see also PROTECTION*), effect on prices, 377, 541; encourage home production, 541; tariff wars, 542; the foreigner sometimes pays, 533, 543; a weapon of war, 542; our hand against every man, 543; early American experience, 544; from the Revolution to the Civil War, 544; since the Civil War, 545; industrial effects, 546; both parties corrupted, 546; tariffs tend to expand, 547; an act of aggression, 547; on raw materials, 547; protection and wages, 548; numbers concerned, 549; gluts, 550; Atkinson on the tariff, 550; effect of protection on trusts, 551; conclusion on protection, 551; causes of American system, 552; expert opinion, 552; should be only on articles that cannot be produced at home, 616

Tariff League, European, against the U. S., 543

Taxation (*see also DIRECT TAXES; DOUBLE TAXATION; INDIRECT TAXES; PERSONAL-PROPERTY TAX; REALTY-TAXES*), a function of government, 6; taxes paid mostly by land-owners, 56; incorrect principles of, destroy value, 102; of franchises, 404; in Australasia, highest among civilized people, 457; increased, in England by municipal trading without proportionate results, 469; local taxes more than three-quarters of the national 474; of commodities universally used, 527; general considerations, 529 ff.; not the only source of revenue, 529; interest and importance of the subject, 530; in history-making, 530; everybody pays taxes 530; increased with municipal operation, 531; Atkinson on, 531; rates in different countries, 531; methods influence rate, 531; and general well-being, 532; taxes affect movements of capital and ability, 533; civilization and, 533; opposite methods illustrated, 533; men generally geese in questions concerning, 534, 559; direct and indirect taxes, 534; shifting of taxes, 536; scamping work and, 536; for maintenance of idle prisoners, 536; important principle of, 537; need of free competition, 537; prices highest where taxes are highest, 538; raised by tariff duties a weapon, 551; ideal, 564; taxing incomes tends to double, 565; progressive, 565; as affecting benevolence, 568; schemes of robbery by, 568, 604; personal-property tax tends to double, 574; taxes not paid on

bonds, 577; abolition of personal, proposed, 578; corporations, 583 ff.; franchises should be taxed, 584; equalization, 593; local option, 598; restricted to real property, 600; double taxation, 608 ff.; of mortgages, 608 ff.; at the source, 609, 613, 614; bottom principle of, 609; U. S. Supreme Court and, 610; excises multiply, 613; taxing liens, 613; summary and conclusions, 615 ff.; perfect, not for imperfect people, 615; vampire-taxes needed now, 615; rental-value tax may ultimately replace them, 615; inquisition-taxes intolerable, 616; the remote ideal, 617; Nature pays some taxes, 617; and can pay all, 618; evolution of, 618; the ideal, 619; future of, 619; single tax no hardship to land-owners, 620; amortization, 620; single tax a boon to the poor, 621; how to include all citizens, 622; wastes and stupidities, in, largely due to pauper voters, 622; causes of delay, 622 ff.; ignorance and self-seeking, 622; in the U. S. Constitution, 623

Taxpayers, in New York, 472, 558; suffrage rights of, 484 ff.; Tilden Commission's plan, 485; graded in Germany, 486; and recreations, 503; increase in their number the best security for an orderly and happy community, 505; many improvements not at taxpayer's expense, 505; Prof. Trent on indirect, 559

Telegraph and government, 415

Telephone, municipalization of the, 442

Tenant, 79 ff.

Tender, 186; kinds of money

in, 187; determined by Congress, 187; bad money as legal, 362

Tennessee, secret stills in, 539

Texas, suffrage in, 484

Theatre in Germany and France, 490

Thiers, L. A., on diffusion of taxation, 536

Things, made to embody thoughts, 92; value of, depends on value of idea embodied, 92

Thinkers produce value, 102

Thornton, W. T., on pretending to work, 214

Tilden Commission, 485

Title, search of, 73; insurance, 74; clouds on, 75

Tobacco, tax on, 539

Token-Money, 364

Toledo, O., gas-plant in, 437

Tolls, 392; now generally abandoned 393; still taken on East River bridges, 394

Tolstoy and socialism, 233

Tools a form of capital, 117

Torrens System (of land transfer), 84

Trade and civilization go together, 157; improved balance of, supplies gold, 377

Trade-Unionists, proportion of, to population in the U. S., 27, 260; attacks on law, 278; proportion of, in New Zealand and Western Australia, 316

Trade-Unions, and the right to work, 26; and "greatest happiness" principle, 27; competition among mechanics active despite regulation of, 105; government suits against, 137; agreeing to keep up prices, 138; C. P. Shea on principles of, 178; coercion of bosses, 214; secure the incompetent higher wages, 214; coercion by, 243 ff.; falling off of membership of, 253; typographical, 253; murders and, 254; funeral-drivers', 256; promotion

of peace, legitimate function of, 264; when in opposition to laws of Nature and the state, 265; and Sherman Anti-Trust Act, 266 n.; liability for damages, 277, 278; permanent destruction of, deplorable, 283; influence in raising wages and increasing intelligence, 340; of railroad employees, 408; honor among members of, 409; versus prison labor, 512; service in keeping wages up to point of equation, 627

Transfer of Land, 69; effect of fraud, 78; the Torrens system, 84

Trans-Missouri Freight Association, government suit against 137

Transportation, organizers of, 102; decline in cost of, 335

Trent, Prof., on indirect tax-payer, 559

Trespass, 68

Trustees: *see QUASI-CONTRACTUAL RELATIONS*

Trusts (*see also CAPITAL TRUSTS; LABOR TRUSTS*), 132; "human nature" and, 132; Bellamy and the benign, 132; public loses benefit of competition in, 132; who gets benefit of co-operation in, 132; their economy, 133; not generally profitable, 134; effect of inordinate prices on, 135; not an unmixed good, 135; control of output by, 135; Prof. Seager on, 135; state control of, 136; laws against, 136; Beef Trust, 137; corruption of legislatures by, 140; Bellamy's proposition, 140; in Birmingham, 304; effect of protective tariff on, 551

Tunnels, for pipes, wires, etc., 443; municipal, 444

Turkey, without a constitution, 66; taxation in, 534

Tweed, W. M., and municipal corruption, 463, 474, 482 ff.

Unearned Increment, 57 ff., 506; claimed for the poor, 60; not characteristic of land alone, 60; Prof. Mayo-Smith on, 61; paying rent on, cause of poverty, 61; of franchises, 394, 428; of street railways, 428

Unemployable, caring for the, 286, 351

Unemployed, 231, 254, 350, 499

Unfortunates, 349

Unionists: *see TRADE-UNIONISTS*

Unions (*see also TRADE-UNIONS*), employers' and citizens' industrial, 253

United States, corporations in, 50; in process of evolution or of dissolution?, 328; loss to, in carrying advertisements, 412; books in, 414; paternalism in, 517; government of, increase in cost, 558

Universal Suffrage (*see also TAXPAYERS; VOTERS*), bureaucracies provided by, 456; gradual growth of, in the United States, 482; for city officers almost unknown in Europe, 484; legitimate claims of, 485; Paris under, 486; logically implies individualism, 488; as affecting charity administration, 496; effect of, 629; reaction back to limited, 629

Universities, state, 480, 522; attention paid to the civic relations in, 629

Usury, 118; laws against, 118, 119; disappearing from enlightened communities, 119; laws hard on borrowers, 120

Utah, eight-hour law in, 284

Value, producers and destroyers of, 102; values depend on

sound morals, 102; should be taxed, 609

Vampire-Taxes: *see INDIRECT TAXES*

Vanderbilt, Commodore, economies effected by, 93, 98, 101; fortune of, 114; usefulness of, 353

Vaud (Switzerland), progressive income-tax in, 571

Vermont, taxation of mortgages in, 609

Vested Interests, 557

Vienna, suffrage in, 487

Village Government, 17

Virginia, secret stills in, 539

Voters (*see also SUFFRAGE; UNIVERSAL SUFFRAGE*), ignorant and dishonest, 78, 226, 380, 518; city officers largely elected by non-taxpaying, 471; corruption of, under guise of charity, 483; proletariat, 484, 485; rights of taxpayers as, 484 ff.; Tilden Commission's plan, 485; accommodations secured by non-taxpaying, 487; America can only improve ignorant and shiftless, 487; non-resident, over-assessment of property of, 595

Vreeland, H. H., gets St. Valentine's Day check for \$100,000, 105

Wage-Earner (*see also LABOR*), and enterpriser, 92, 103; better chance for, 112; two dollars a day for each, 230

Wagers, 165

Wages (*see also LABOR; SCAMPING WORK*), vary with ability, 89; Brassey on, 89; General Walker on, 90; often in excess of production, 100; in bad times, 101, 346, 347; returns of labor nearly fixed, 104; those of ability vary widely, 105; rates of division, 107; minimum wage, 111; as

capital 117; piecework, 215; only income, not outgo considered, 218; could not rise under socialism, 226; living wage, 231, 286, 306, 314; trade-union coercion to raise, 243; Prof. Laughlin on, 245; limited by demand for product, 245; by competition, 245; by invention, 246; and prices, theory of, 306; J. S. Mill on law of 306; uniformity of, 312; rise since middle of nineteenth century, 328; in the United States, 328; machinists' wages in 1842 and to-day, 330; in Great Britain, 331; W. H. Mallock on, 331 n.; inflation of, 333, 627; rise in, 335; increase at expense of capital, 339; and also of ability, 340; and from diffusion of honesty, 341; how influenced by trade-unions, 340; protection and, 548; service of trade-unions in keeping up, 627

Walker, F. A., on differences in laborers, 90; first to clearly indicate shares in production, 110; on diffusion of wealth, 326

Walker, J. H., on business failures, 97 n., 209 n.

Walking Delegates, 216

Wall Street, actual rate of interest in, 119; verbal contracts in great transactions of, 342; merchandising and manufacturing in, 576

Walpole, Sir Robert, single-tax theory of, 596

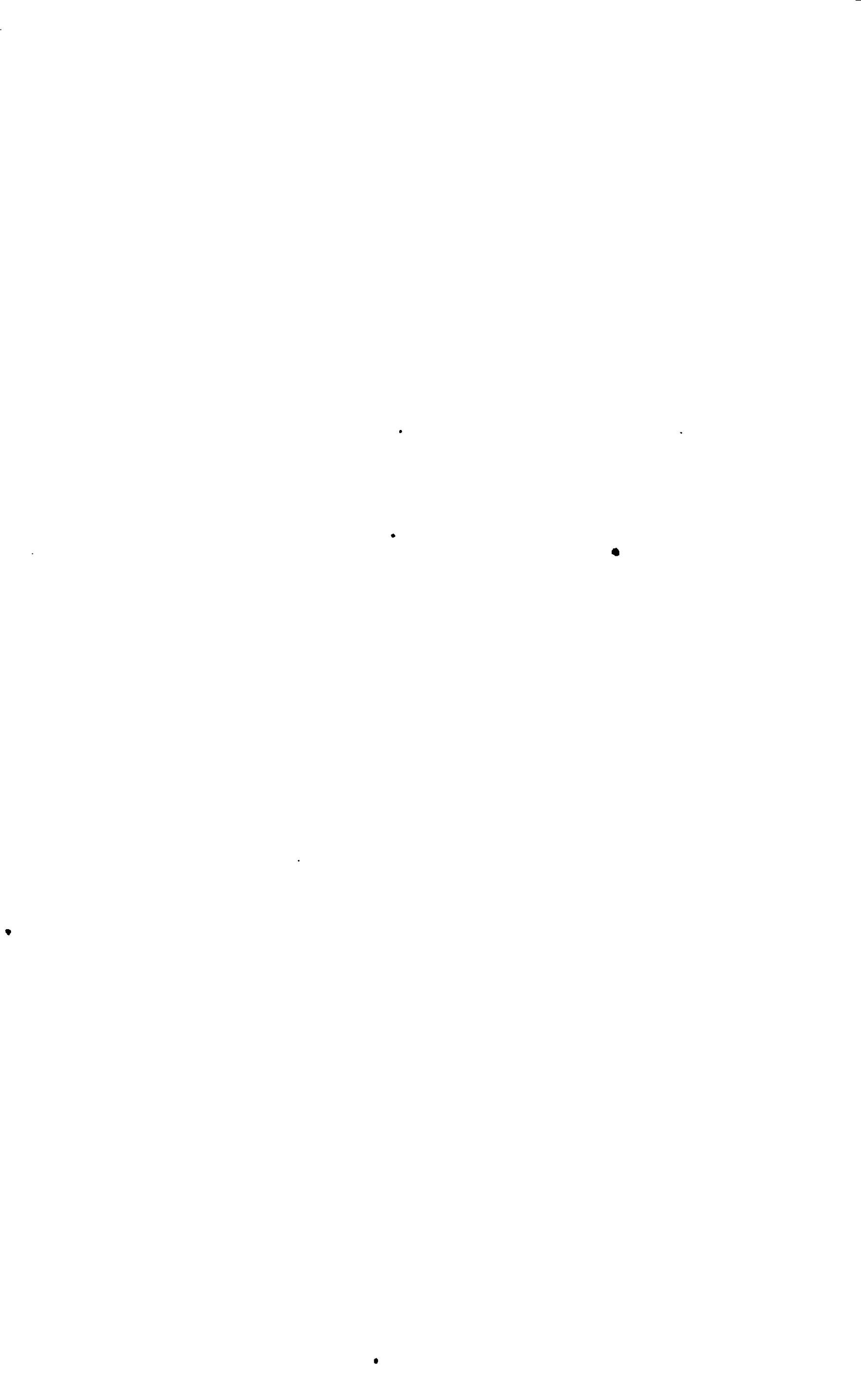
Wanamaker, John, and civic responsibility, 141

War, industrial, and industrial law, 289; civil, most frequently caused by taxation, 530

Ward, Sir Joseph, on taxes in Australasia, 458

- Waring, Colonel, and municipal labor**, 470
- Warranty**, 179
- Wars of the Roses**, effect upon militarism, 48
- Waterworks**, 432; why fit for municipalization, 433; sewage pollution, 433; municipal management naturally wasteful, 434; a natural monopoly, 434
- Watson, Tom**, on the money question, 359
- Watt, James**, 93
- Wealth** (*see also CAPITAL; FORTUNE; MONEY; WAGES*) versus poverty, 113; no broad and high civilization without, 157; ways to, 209; suddenly acquired a doubtful blessing, 221; increase of, in the United States, 221 *n.*; often destroyed when divided, 223; diffused only by diffusion of ability, 326; diffusion increasing, 328; "rich richer and poor poorer" not true in civilized countries, 328; increase in wages in the United States, 328; in Great Britain, 331; W. H. Mallock quoted, 331 *n.*; increase in wages and decrease in other prices come largely from capital's share, 339; and from labor's increased ability, 340; and from diffusion of honesty, 341; and from creating and supplying new wants, 343; rich men generally born poor, 348 117; cases cited by General Walker and the author, 348 *n.*; happiness not dependent on, 348; law cannot discriminate between rich and poor, 352; many stay rich despite giving away much, 353; cannot be used wisely by the community, 354; duties of, 354, ff.; useless rich man a dependent, 356; Emerson on the distribution of, 356; the poor not the debtor class, 372; nor the class that handles least gold, 372; acquiring, by magic, 378, in the hands of the few, 625; 628; desire for, beneficial, 629
- Webb, Sidney**, on Australia 291; on eight-hour day, 338
- Wells, D. A.**, on silver agitation of 1890, 102; on "Recent Economic Changes", 330; on indirect taxation, 558 *n.*, 561 *n.*; on perjury in swearing off taxes, 564; on progressive taxation, 568 *n.*; on multiplied taxation, 574; on personal-property tax, 581 *n.*; on realty-tax, 588
- West Virginia**, personal-property tax in, 581 *n.*
- "Wildcat" Money**, 385
- William the Conqueror** and the feudal system, 47, 48
- Wills**, 202; who cannot make, 203; restrictions on alienation, 204; devises for educational or charitable uses, 205; must be proved genuine, 206
- Wilson Tariff Bill**, 546
- Wisconsin**, anti-boycott law in, 280; personal-property tax in, 580 *n.*
- Wisdom and sympathy** gaining control, 631; cannot be forced, 631; necessary creed of, 632
- Wise, —**, framer of New South Wales Compulsory Arbitration Act, 308
- Woodyard, Charity Organization Society's**, 499
- Woolwich**, Eng., government ferry at, 395
- Worcester, Mass.** boycott in, 28; examples of change of fortune, 97 *n.*, 209 *n.*; electricity in, 441
- Work** (*see also RIGHT TO WORK*), right to, 26 ff.; life and, 26; society's alleged duty to provide, 29; able man finds, 93; scamping, 209 ff.; piece-work, 213; forbidding, 214;

- slighting, 216; right to stop, 258
Work-day, Shorter, (see also EIGHT-HOUR DAY,) Jevons on, 338; production rising with, 338, 339; in Austrian mines, 339
Workers, slow, provisions for, 296
World, a perfect, 629
Writers produce value, 102
Yale Students and truckmen's strike, 88
Yellowstone Park, a natural monopoly, 144
Young, the, and education, 517 ff.
Zueblin, Prof., on municipal progress, 420 ff.; **on management of municipal utilities,** 467



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